

1 XAVIER BECERRA
2 Attorney General of California
3 THOMAS L. RINALDI
4 Supervising Deputy Attorney General
5 M. TRAVIS PEERY
6 Deputy Attorney General
7 State Bar No. 261887
8 300 So. Spring Street, Suite 1702
9 Los Angeles, CA 90013
10 Telephone: (213) 269-6309
11 Facsimile: (213) 897-2804
12 *Attorneys for Complainant*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:

Case No. 79/17-4901

**JAIME ISIDRO ALVAREZ dba CHURRIS
SMOG TEST ONLY**
3382 Firestone Blvd., Unit #B
South Gate, CA 90280

**FIRST AMENDED
ACCUSATION**

Automotive Repair Dealer Registration No.
ARD 285088
Smog Check Test Only Station License No.
TC 285088

and

JAVIER MADRIGAL JR.
9620 Deeble St.
South Gate, CA 90280

Smog Check Inspector License No. EO 639669

Respondents.

Complainant alleges:

PARTIES

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

2. On or about October 14, 2016, the Bureau issued Automotive Repair Dealer Registration No. ARD 285088 to Jaime Isidro Alvarez dba Churris Smog Test Only (Respondent Alvarez). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein, was due to expire on October 31, 2017, and was cancelled on April 20, 2017.

3. On or about November 1, 2016, the Bureau issued Smog Check Test Only Station License No. TC 285088 to Respondent Alvarez. The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought herein, was due to expire on October 31, 2017, and was cancelled on April 20, 2017.

4. On or about September 12, 2016, the Bureau issued Smog Check Inspector License No. EO 639669 to Respondent Javier Madrigal Jr. (Respondent Madrigal). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2018, unless renewed.

JURISDICTION

5. Business and Professions Code (Bus. & Prof. Code) section 118 states in pertinent part:

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

6. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an automotive repair dealer registration.

7. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

11

8. Health and Safety Code (Health & Saf. Code) section 44002 provides, in pertinent part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

9. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

STATUTORY PROVISIONS

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the 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.

11. Bus. & Prof. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

111

1 12. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog
2 check stations shall be performed in accordance with procedures prescribed by the department.

3 13. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate
4 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
5 40012.

6 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

13

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

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

18 15. Health & Saf. Code section 44072.10 states, in pertinent part:

19

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

24

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

27 16. Health & Saf. Code section 44072.8 states that when a license has been revoked or
28 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.

29 ///

30 ///

31 ///

32 ///

REGULATORY PROVISIONS

17. California Code of Regulations (CCR), title 16, section 3340.24, subdivision (c), states:

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

18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42 of this article.”

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

20. CCR, title 16, section 3340.41, subdivision (c), states that “[n]o person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.”

21. CCR, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California.

COST RECOVERY

22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board 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.

111

VID DATA REVIEW

23. On March 9, 2015, the Bureau implemented a policy change requiring the use of an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in addition to communication protocol (the language used to communicate) and Parameter ID (PID) differences with vehicles that have been certified correctly that are the same make and model vehicles.

24. Bureau representative Vaheh Aghazarian initiated an investigation in which he reviewed OIS test data for Churris Smog Test Only. Representative Aghazarian's investigation revealed that the data related to certain vehicles certified by Churris Smog Test Only contained a pattern of unmistakable discrepancies between the information transmitted during the inspections and documented information known about the subject vehicles. Specifically, Representative Aghazarian compared the data received from the certified vehicles to data from vehicles of the same year, make, and model and determined that the data from at least ten (10) of the certified vehicles all contained at least two of the following unmistakable discrepancies: (1) eVin transmission not as expected; (2) incorrect vehicle communication protocols; and (3) incorrect PID counts. These documented discrepancies confirm that these ten (10) vehicles receiving smog certificates from Churris Smog Test Only were fraudulently tested during the smog inspection using the "clean plugging" method.¹ The following chart illustrates the documented clean plugging activities of Respondents between December 30, 2016 and March 22, 2017.

111

111

111

¹ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board Diagnostic, generation II, (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 and/or not present for testing.

1	Test Date	Vehicle Certified & License or VIN No.	Certificate No.	Technician License No.	OIS Test Data Details
2	12/30/2016	2002 Chevrolet Avalanche C1500 7Z16169	ZL689673C	EO639669 (Respondent Madrigal)	Comm. Protocol: 1914 (expected: JVPW) PID Count: 8 (expected: 22 or 25) eVIN Match
3	01/26/2017	2000 GMC New Sierra 7F96814	ZN874669C	EO639669 (Respondent Madrigal)	Comm. Protocol: 1914 (expected: JVPW) PID Count: 8 (expected: 22) eVIN Matched but Not Expected
4	01/28/2017	2001 Ford F150 Supercrew 99000V1	ZN874679C	EO639669 (Respondent Madrigal)	Comm. Protocol: 1914 (expected: JPWM) PID Count: 7 (expected: 20) eVIN Match
5	03/18/2017	2000 GMC New Sierra C1500 1GTEC19TXYZ323219	ZR581818C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: 1914 (expected: JVPW) PID Count: 8 (expected: 22) eVIN Not Expected and Not Reported
6	03/20/2017	2003 Hummer H2 5GRGN23U43H123573	ZR581842C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: 1914 (expected: JVPW) PID Count: 8 (expected 22) eVIN Expected but Not Reported

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
	03/21/2017	2002 Ford Mustang 1FAFP44402F1261 16	ZR652331C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: I914 (expected: JPWM) PID Count: 7 (expected: 21) eVIN Match																	
	03/21/2017	2002 Saturn SL2 4VDX016	ZR652322C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: I914 (expected: JVPW) PID Count: 7 (expected: 17) eVIN Expected but Not Reported																	
	03/22/2017	2002 Ford Explorer XLT 5AWS610	ZR723104C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: I914 (expected: JPWM) PID Count: 7 (expected: 22) eVIN Match																	
	03/22/2017	2004 Dodge Durango Limited 5KSE380	ZR723105C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: I914 (expected: ICAN11bt5) PID Count: 7 (expected: 43 8) eVIN Match																	
	03/22/2017	2004 GMC New Sierra K1500 7H12596	ZR723108C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: I914 (expected: JVPW) PID Count: 8 (expected: 22) eVIN Match																	

24 25. The data analysis conducted on Churris Smog Test Only between December 30,
 26 2016 and March 22, 2017, shows that Respondents participated in a scheme to perform at least
 27 ten (10) fraudulent Smog Check inspections resulting in the issuance of ten (10) fraudulent
 28 electronic Smog Check Certificates of Compliance.

///

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

26. Respondent Alvarez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he made or authorized statements which he knew or in the exercise of reasonable care should have known to be untrue or misleading when he issued electronic smog certificates of compliance to the 10 vehicles listed above in paragraph 24, certifying those vehicles as being in compliance with applicable laws and regulations when, in fact, those vehicles had not been properly inspected. Respondent did not inspect any of the 10 vehicles as required by Health & Saf. Code section 44012. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

27. Respondent Alvarez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he committed acts that constitute fraud by issuing electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

THIRD CAUSE FOR DISCIPLINE

(Material Violation of Automotive Repair Act)

28. Respondent Alvarez's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed in a material respect to comply with the provisions of this chapter or regulations adopted pursuant to it when he issued electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above, without performing bona fide inspections of the emission

1 control devices and systems on those vehicles, thereby depriving the People of the State of
2 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
3 refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through
4 25, above, as though set forth fully herein.

5 **FOURTH CAUSE FOR DISCIPLINE**

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

7 29. Respondent Alvarez's Smog Check Test Only Station License is subject to
8 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he
9 failed to comply with the following sections of that Code:

10 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
11 performed on the 10 vehicles identified in paragraph 24 above, in accordance with procedures
12 prescribed by the department.

13 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
14 compliance for the 10 vehicles identified in paragraph 24 above, without ensuring that the
15 vehicles were properly tested and inspected to determine if they were in compliance with Health
16 & Saf. Code section 44012.

17 Complainant refers to, and by this reference incorporates, the allegations contained in
18 paragraphs 23 through 25, above, as though set forth fully herein.

19 **FIFTH CAUSE FOR DISCIPLINE**

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

22 30. Respondent Alvarez's Smog Check Test Only Station License is subject to
23 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he
24 failed to comply with provisions of California Code of Regulations, title 16, as follows:

25 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
26 electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above.

27 ///

28 ///

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above, even though the vehicles had not been inspected in accordance with section 3340.42.

c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information into the emissions inspection system for the 10 vehicles identified in paragraph 24 above.

d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were conducted on the 10 vehicles identified in paragraphs 24 above, in accordance with the Bureau's specifications.

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

31. Respondent Alvarez's Smog Check Test Only Station License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the 10 vehicles identified in paragraph 24 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

32. Respondent Madrigal's Smog Check Inspector License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the emission control tests on 3 of the vehicles identified in paragraph 24 above, in accordance with procedures prescribed by the department. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though

set forth fully herein.

EIGHTH CAUSE FOR DISCIPLINE

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

33. Respondent Madrigal's Smog Check Inspector License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

- a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance for 3 of the vehicles identified in paragraph 24 above.
- b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 3 of the vehicles identified in paragraph 24 above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.
- c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information into the emissions inspection system for 3 of the vehicles identified in paragraph 24 above.
- d. **Section 3340.42:** Respondent failed to conduct the required smog tests on 3 of the vehicles identified in paragraph 24 above, in accordance with the Bureau's specifications.

Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

34. Respondent Madrigal's Smog Check Inspector License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for 3 of the vehicles identified in paragraph 24 above, without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through 25, above, as though set forth fully herein.

OTHER MATTERS

35. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may suspend, revoke, or place on probation the registration for all places of business operated in this state by Respondent Alvarez, upon a finding that he has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

36. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station License No. TC 285088, issued to Respondent Alvarez, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the director.

37. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 639669, issued to Respondent Madrigal, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the director.

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 No. ARD 285088, issued to Jaime Isidro Alvarez dba Churris Smog Test Only;

2. Revoking or suspending any other automotive repair dealer registration issued to Jamie Isidro Alvarez;

3. Revoking or suspending Smog Check Test Only Station License No. TC 285088, issued to Jaime Isidro Alvarez dba Churris Smog Test Only:

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Jamie Isidro Alvarez;

5. Revoking or suspending Smog Check Inspector License No. EO 639669, issued to Javier Madrigal Jr.:

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Javier Madrigal Jr.:

1 7. Ordering Jaime Isidro Alvarez dba Churris Smog Test Only and Javier Madrigal Jr. to
2 pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of
3 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.

5
6
7 DATED: January 19, 2018

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


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

LA2017506653
52755283.docx