

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*

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. 79/17-4901

13 **JAIME ISIDRO ALVAREZ dba CHURRIS**
14 **SMOG TEST ONLY**

3382 Firestone Blvd., Unit #B
South Gate, CA 90280

**FIRST AMENDED
ACCUSATION**

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

18 **and**

19 **JAVIER MADRIGAL JR.**

9620 Deeble St.
South Gate, CA 90280

21 Smog Check Inspector License No. EO 639669

22 Respondents.

24 Complainant alleges:

25 **PARTIES**

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

///

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.

///

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

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

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

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 Saf. Code § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

• • • •

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

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

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

• • • •

(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:

■ ● ● ●

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

16. Health & Saf. Code section 44072.8 states that 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.

///

///

///

///

1 **REGULATORY PROVISIONS**

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

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

7 18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
8 shall at all times "[i]nspect, test and repair vehicles, as applicable, in accordance with section
9 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42
10 of this article."

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

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

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

23 **COST RECOVERY**

24 22. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
25 the administrative law judge to direct a licensee found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case.

28 ///

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.

///

///

///

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.

Test Date	Vehicle Certified & License or VIN No.	Certificate No.	Technician License No.	OIS Test Data Details
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
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
01/28/2017	2001 Ford F150 Supercrew 99000V1	ZN874679C	EO639669 (Respondent Madrigal)	Comm. Protocol: 1914 (expected: JPWM) PID Count: 7 (expected: 20) eVIN Match
03/18/2017	2000 GMC New Sierra C1500 1GTEC19TXYZ32 3219	ZR581818C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: 1914 (expected: JVPW) PID Count: 8 (expected: 22) eVIN Not Expected and Not Reported
03/20/2017	2003 Hummer H2 5GRGN23U43H12 3573	ZR581842C	EO638034 (Edgar Antonio Perez)	Comm. Protocol: 1914 (expected JVPW) PID Count: 8 (expected 22) eVIN Expected but Not Reported

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

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

///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

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

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Fraud)**

14 27. Respondent Alvarez's Automotive Repair Dealer Registration is subject to
15 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
16 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the
17 10 vehicles identified in paragraph 24 above, without performing bona fide inspections of the
18 emission control devices and systems on the vehicles, thereby depriving the People of the State of
19 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
20 refers to, and by this reference incorporates, the allegations contained in paragraphs 23 through
21 25, above, as though set forth fully herein.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Material Violation of Automotive Repair Act)**

24 28. Respondent Alvarez's Automotive Repair Dealer Registration is subject to
25 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he
26 failed in a material respect to comply with the provisions of this chapter or regulations adopted
27 pursuant to it when he issued electronic smog certificates of compliance for the 10 vehicles
28 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 ///

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

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

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

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

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Dishonesty, Fraud or Deceit)**

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

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

1 set forth fully herein.

2 **EIGHTH CAUSE FOR DISCIPLINE**
3 **(Failure to Comply with Regulations Pursuant**
4 **to the Motor Vehicle Inspection Program)**

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

8 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
9 electronic smog certificates of compliance for 3 of the vehicles identified in paragraph 24 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 3 of the
11 vehicles identified in paragraph 24 above, in accordance with Health & Saf. Code sections 44012
12 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
14 into the emissions inspection system for 3 of the vehicles identified in paragraph 24 above.

15 d. **Section 3340.42:** Respondent failed to conduct the required smog tests on 3 of the
16 vehicles identified in paragraph 24 above, in accordance with the Bureau's specifications.

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 **NINTH CAUSE FOR DISCIPLINE**
20 **(Dishonesty, Fraud or Deceit)**

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5

6
7
8
9

0
1
2
3

4

15
16

- 17
18
19
20
21
22
23
24
25
26
27
28

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



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

8
9
10
11 LA2017506653
12 52755283.docx
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28