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

13
14 In the Matter of the Accusation Against:

Case No. 79/22-12873

15 **ONTARIO SMOG**
16 **Robert John Rains, Owner**
17 **152 North Mountain Ave.**
Ontario, CA 91762
18 **Automotive Repair Dealer**
19 **Registration No. ARD 289295**
Smog Check Station License TC 289295
20 **Robert John Rains**
21 **152 North Mountain Ave.**
Ontario, CA 91762
22 **Smog Check Inspector No. EO 640653**

ACCUSATION

23 Respondents.

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25
26 **PARTIES**

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

2. On or about January 8, 2018, the Bureau of Automotive Repair (BAR) issued Automotive Repair Dealer Registration Number ARD 289295 to Robert John Rains DBA Ontario Smog (Respondent Ontario). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and was cancelled on August 29, 2023.

3. On or about January 24, 2018, the Bureau of Automotive Repair issued Smog Check Station License Number TC 289295 to Ontario Smog. The Smog Check Station License was in full force and effect at all times relevant to the charges brought herein and was cancelled August 29, 2023.

4. On or about October 13, 2017, the Bureau of Automotive Repair issued Smog Check Inspector License Number EO 640653 to Robert John Rains (Respondent Rains). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2025, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau, under the authority of the following laws.

6. Business and Professions Code section 118, subdivision (b) states:

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.

7. Business and Professions Code section 9884.7 provides that the Director may revoke an Automotive Repair Dealer registration.

8. Business and Professions Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director or Chief of Jurisdiction to proceed with a Disciplinary proceeding against an Automotive Repair Dealer or to render a decision invalidating a registration temporarily or permanently.

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9. Health and Safety 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.

10. Health and Safety 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.

11. Health and Safety Code section 44072.8 states, "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."

STATUTORY PROVISIONS

12. Business and Professions 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 Business and Professions Code.

13. Business and Professions Code section 9884.7 states:

(a) The Director, where the Automotive Repair Dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation 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, which constitutes fraud.

• • • •

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

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

6 (d) For purposes of this section, "Fraud" includes, but is not limited to,
7 violations of this chapter involving misrepresentations and all of the following:

8 (1) Any act or omission that is included within the definition of
9 either "Actual Fraud" or "Constructive Fraud," as those terms are defined
10 in Sections 1572 and 1573 of the Civil Code.

11 (2) A misrepresentation in any manner, whether intentionally
12 false or due to gross negligence, of a material fact.

13 (3) A promise or representation not made honestly and in good
14 faith.

15 (4) An intentional failure to disclose a material fact.

16 (5) Any act in violation of Section 484 of the Penal Code.

17 14. Health and Safety Code section 44012 provides, in pertinent part, that tests at
18 Smog Check Stations shall be performed in accordance with procedures prescribed by the
19 Department.

20 15. Health and Safety Code section 44015, subdivision (b), provides that a Certificate
21 of Compliance shall be issued if a vehicle meets the requirements of Health and Safety Code
22 section 40012.

23 16. Health and Safety Code section 44032 provides that qualified Technicians shall
24 perform tests of emissions control devices and systems in accordance with Health and Safety
25 Code section 40012.

26 17. Health and Safety Code section 44072.2 states, in pertinent part:

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

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

....

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

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

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3 18. Health and Safety Code section 44072.10 states, in pertinent part:

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5 (c) The Department shall revoke the License of any Smog Check
6 Technician or Station Licensee who fraudulently certifies vehicles or participates
in the fraudulent inspection of vehicles. A fraudulent inspection includes, but is
7 not limited to, all of the following:

8 (1) Clean piping, as defined by the Department.

9 (2) Tampering with a vehicle emission control system or test
analyzer system.

10 (3) Tampering with a vehicle in a manner that would cause the
11 vehicle to falsely pass or falsely fail an inspection.

12 (4) Intentional or willful violation of this chapter or any
regulation, standard, or procedure of the Department implementing this
13 chapter

14 19. Health and Safety Code section 44072.8 states that when a License has been
15 revoked or suspended following a hearing under this article, any additional license issued under
16 this chapter in the name of the licensee may be likewise revoked or suspended by the Director.

17 **REGULATORY PROVISIONS**

18 20. California Code of Regulations, title 16, section 3340.24, subdivision (c), states:
19 "The Bureau may suspend or revoke the license of or pursue other legal action
20 against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of
21 compliance or a certificate of noncompliance."

22 21. California Code of Regulations, title 16, section 3340.30, subdivision (a), states
23 that a licensed Smog Technician shall at all times "[i]nspect, test and repair vehicles, as
24 applicable, in accordance with section 44012 of the Health and Safety Code, section 44035 of the
25 Health and Safety Code, and section 3340.42 of this article."

26 22. California Code of Regulations, title 16, section 3340.35, subdivision (c), states
27 that a licensed Smog Check Station "shall issue a Certificate of Compliance or Noncompliance to
28 the Owner or Operator of any vehicle that has been inspected in accordance with the procedures

1 specified in section 3340.42 of this article and has all the required emission control equipment
2 and devices installed and functioning correctly."

3 23. California Code of Regulations, title 16, section 3340.41 states, in pertinent part:

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5 (c) No person shall enter any vehicle identification information or
6 emission control system identification data for any vehicle other than the one
7 being tested into the EIS or OIS. Nor shall any person enter into the EIS or OIS
any false information about the vehicle being tested

8 24. California Code of Regulations, title 16, section 3340.42, sets forth specific
9 emissions test methods and procedures, which apply to all vehicles inspected in the State of
10 California.

11 **COST RECOVERY**

12 25. Business and Professions Code section 125.3 provides, in pertinent part, that a
13 Board may request the Administrative Law Judge to direct a licensee found to have committed a
14 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
15 investigation and enforcement of the case.

16 **CALIFORNIA'S SMOG CHECK PROGRAM**

17 26. California's Smog Check Program requires most vehicles in the State to undergo a
18 smog check inspection every two years or when the vehicle's title is transferred. The BAR On-
19 Board Diagnostic Inspection System (BAR-OIS) is required to inspect most model year 2000 and
20 newer gasoline vehicles, hybrid vehicles, and alternative-fuel vehicles and most model year 1998
21 and newer diesel vehicles. Implemented Statewide on March 9, 2015, the system consists of a
22 certified Data Acquisition Device (DAD) and off-the-shelf equipment. The BAR-OIS uses the
23 California Vehicle Inspection System software to communicate with BAR's central database
24 through an internet connection.

25 27. A smog check inspection in certain Enhanced areas of the State is an Acceleration
26 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
27 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons (HC),
28 Carbon Monoxide (CO), Oxides of Nitrogen (NOx), Carbon Dioxide (CO²) and Oxygen (O²).

1 The first part of the test is a loaded mode test of the vehicle's tailpipe emissions on a
2 Dynamometer. The vehicle's drive wheels are then placed on rollers, and the vehicle is driven to
3 simulate driving conditions while the emissions are sampled by the EIS.

4 28. In Basic (Non-Enhanced) areas of the State, or depending on a vehicle's
5 configuration, a similar test called a Two Speed Idle test is performed, but instead of applying a
6 load to the vehicle's drive wheels with a Dynamometer, the EIS measures the emissions of HC,
7 CO, O₂, and CO₂ at idle as well as 2500 revolutions per minute (rpm).

8 29. In the visual portion of a smog check, the Technician inspects the emission control
9 components to verify that the required emission control devices are present and properly
10 connected.

11 30. An On-Board Diagnostics (OBD II) functional test is also performed on most 1996
12 to 1999 model year vehicles. The EIS retrieves information through the Diagnostic Link
13 Connector (DLC) from the vehicle's on-board computer about its ability to communicate, the
14 status of the vehicle Inspection Maintenance (I/M) readiness monitors and the Malfunction
15 Indicator Lamp (MIL or "Check Engine") light command. The I/M readiness monitors tell
16 whether or not the OBD II system has run a sufficient number of self-tests on the vehicle's
17 emission and engine control systems. A failure of one or more of the OBD II functional criteria,
18 depending on model year, will result in the vehicle failing its smog check inspection. In addition
19 to reporting the outcome of the OBD II functional test, the smog check inspection results also
20 show Diagnostic Trouble Codes (DTC) if there are any in the vehicle's on-board computer
21 memory.

22 31. The Inspector enters the results of the visual and functional inspections into the
23 EIS. The EIS unit makes the determination whether or not the vehicle passes the inspection based
24 on the results of the tailpipe, visual and functional tests.

25 32. The EIS is connected by internet connection to the Bureau's Vehicle Information
26 Database (VID). If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
27 inspection. A Certificate of Compliance is issued and transmitted electronically to the VID.
28 Additionally, all data gathered during a Smog Check inspection, regardless of the type of

inspection, is transmitted to and retained in the VID.

33. Beginning March 9, 2015, California's Smog Check Program was updated to require the use of the BAR-OIS. BAR-OIS is the smog check equipment required in all areas of the State when inspecting most model-year 2000 and newer gasoline and hybrid vehicles. The system consists of a certified DAD, computer, bar code scanner, and printer. The DAD is an OBD scan tool that, when requested by the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD connects between the BAR-OIS computer and the vehicle's DLC. The bar code scanner is used to input inspector information, the vehicle identification number (VIN), and Department of Motor Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR) containing inspection results for motorists and a Smog Check Certificate of Compliance number for passing vehicles.

34. During an OIS inspection, engine operating parameters are retrieved from the vehicle's OBD II system and recorded to the VID. This is accomplished during the functional portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- Engine speed in Revolutions per Minute (RPM)
- Throttle position as measured by a Throttle Position Sensor (TPS) mounted onto the throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full throttle.
- Manifold absolute pressure as measured by a Manifold Air Pressure Sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25 to 45 kpa at idle, 101 kpa at full throttle, same as atmospheric pressure at sea level.
- Mass air flow as measured by a Mass Air Flow Sensor (MAF) mounted in the engine's air intake tract. Measured in Grams per Second (gps).

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1 35. During normal engine operation at idle, engine speed is relatively steady around its
2 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or
3 MAF readings are also steady. For the engine speed to increase, the throttle would have to be
4 opened in order to increase airflow through the engine. The engine's management systems supply
5 fuel and spark timing appropriate to any changes in throttle position and engine speed.

6 An increase in throttle, measured by the TPS, which increases engine RPM, would result
7 in a corresponding increase in MAF as well as a change in MAP. Any movement in the throttle
8 from the idle position will result in an increase of airflow through the engine with corresponding
9 increases RPM and MAF along with changes in MAP.

10 36. During an OIS Smog Check inspection, along with other visual and functional
11 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
12 with the engine idling and, when requested by the OIS analyzer, and an elevated or increased
13 engine speed. The increase in engine speed is performed by the inspector by stepping on the
14 throttle pedal or manually opening the throttle resulting in a corresponding increase in engine
15 RPMs by allowing an increase in airflow into the engine.

16 37. The Bureau has become aware of methods that some Smog Check stations and
17 Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a
18 smog check test on their own, or in some instances, are not even present during the time the test is
19 performed. "Clean plugging" is a method by which another vehicle's OBD II system, or another
20 source such as defeat devices, are used to generate passing data readings or diagnostic
21 information for the purpose of fraudulently issuing smog certificates to vehicles that are not in
22 smog compliance, and or not present for testing. Defeat devices attempt to simulate engine
23 operation during a smog check inspection by transmitting OBD II data to the VID which has been
24 modified or replaced entirely for the purportedly inspected vehicle during the functional portion
25 of the OIS inspection.

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FACTUAL ALLEGATIONS

Investigation

38. On or about July 23, 2022, and August 23, 2022, a Bureau Representative conducted a detailed review of the VID Data for Smog Check inspections performed at Ontario Smog¹ which showed a pattern of vehicles being certified with engine operating parameters that did not correspond to normal engine operation, confirming the vehicles receiving smog certifications were not tested during the OBD II functional test, which constitutes clean plugging. The Bureau's review of the Smog Check activities at Ontario Smog confirmed that six Smog Check Certificates of Compliance were fraudulently issued to vehicles.

Clean Plug Number 1 - 2003 Ford F150 Supercrew Harley Davidson

39. OIS Test Data for Ontario Smog indicated that on August 23, 2022, between 1000 and 1017 hours, a 2003 Ford F150 Supercrew Harley Davidson, CA License Plate #7T22247 (2003 Ford F150), was tested and Smog Certificate of Compliance No. SW212422C was issued by Ontario Smog, under Respondent Rains' Smog Check Inspector License. However, during the aforementioned time period that the 2003 Ford F150 was recorded as having been certified, it was not present at the station. Moreover, no Dynamic Data was recorded for the test on the 2003 Ford F150. These discrepancies confirm that the OIS Data Acquisition Device (DAD) was not connected to the 2003 Ford F150 during the certification process as required. The data collected by the DAD during the OBDII functional test confirmed that an OBD defeat device was used instead of the actual vehicle being tested, which constitutes clean plugging.

Clean Plug Number 2 - 2001 Ford Escape

40. OIS Test Data for Ontario Smog indicated that on July 23, 2022, a 2001 Ford Escape, VIN #1FMYU03151KB51655 (2001 Escape), was tested and smog certificate #SU298535C was issued by Ontario Smog, under Respondent Rains' Smog Check Inspector License. However, the fixed throttle positions and subsequent fixed MAP and MAF readings across both idle and elevated engine speeds, as set forth in the underlying OIS Test Data for the

¹ Unusual activity had been detected at Ontario Smog where three vehicles had been tested and certified at another smog check station approximately 35 to 60 minutes prior to being tested and certified at Ontario Smog. An inspection of Ontario Smog was thereafter conducted.

1 inspection of the 2001 Escape, are not characteristic and therefore not expected for normal engine
2 operation. These discrepancies confirm that the OIS DAD was not connected to the 2001 Escape
3 during the certification process as required, thereby rendering this a fraudulent inspection by way
4 of Clean Plugging.

5 **Clean Plug Number 3 - 2005 GMC Envoy**

6 41. OIS Test Data for Ontario Smog indicated that on July 30, 2022, a 2005 GMC
7 Envoy, CA License #8DOW753 (2005 Envoy), was tested and smog certificate #SU475740C was
8 issued by Ontario Smog, under Respondent Rains' Smog Check Inspector License. However, the
9 fixed throttle positions and subsequent fixed MAF readings across both idle and elevated engine
10 speeds, as set forth in the underlying OIS Test Data for the inspection of the 2005 Envoy, are not
11 characteristic and therefore not expected for normal engine operation. These discrepancies
12 confirm that the OIS DAD was not connected to the 2005 Envoy during the certification process
13 as required, thereby rendering this a fraudulent inspection by way of Clean Plugging.

14 **Clean Plug Number 4 - 2000 Chevrolet Tahoe K1500**

15 42. OIS Test Data for Ontario Smog indicated that on July 30, 2022, a 2000 Chevrolet
16 Tahoe K1500, CA License #5CXZ700 (2000 Tahoe), was tested and smog certificate
17 #SU541816C was issued by Ontario Smog, under Respondent Rains' Smog Check Inspector
18 License. However, the fixed throttle positions and subsequent fixed MAF readings across both
19 idle and elevated engine speeds, as set forth in the underlying OIS Test Data for the inspection of
20 the 2000 Tahoe, are not characteristic and therefore not expected for normal engine operation.
21 These discrepancies confirm that the OIS DAD was not connected to the 2000 Tahoe during the
22 certification process as required, thereby rendering this a fraudulent inspection by way of Clean
23 Plugging.

24 **Clean Plug Number 5 - 2000 Chevrolet Express G3500**

25 43. OIS Test Data for Ontario Smog indicated that on August 5, 2022, a 2000
26 Chevrolet Express G3500, CA License #5XYZ678 (2000 Express), was tested and smog
27 certificate #SU658041C was issued by Ontario Smog, under Respondent Rains' Smog Check
28 Inspector License. However, the fixed throttle positions and subsequent fixed MAP and MAF

1 readings across both idle and elevated engine speeds, as set forth in the underlying OIS Test Data
2 for the inspection of the 2000 Express, are not characteristic and therefore not expected for
3 normal engine operation. These discrepancies confirm that the OIS DAD was not connected to
4 the 2000 Express during the certification process as required, thereby rendering this a fraudulent
5 inspection by way of Clean Plugging.

6 **Clean Plug Number 6 - 2006 Chevrolet Silverado C1500**

7 44. OIS Test Data for Ontario Smog Check indicated that on August 19, 2022, a 2006
8 Chevrolet Silverado C1500, (no plate) VIN 3GCEC14X26G206600 (2006 Silverado), was tested
9 and smog certificate # SW139010C was issued by Ontario Smog Check, under Respondent Rains'
10 Smog Check Inspector License. However, the fixed throttle positions and subsequent fixed MAP
11 and MAF readings across both idle and elevated engine speeds, as set forth in the underlying OIS
12 Test Data for the inspection of the 2006 Silverado, are not characteristic and therefore not
13 expected for normal engine operation. These discrepancies confirm that the OIS DAD was not
14 connected to the 2006 Silverado during the certification process as required, thereby rendering
15 this a fraudulent inspection by way of Clean Plugging.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Untrue of Misleading Statements)**

18 45. Respondent Robert John Rains, DBA Ontario Smog's Automotive Repair Dealer
19 Registration is subject to disciplinary action pursuant to Business and Professions Code section
20 9884.7, subdivision (a)(1), in that he made statements which were known to be untrue or
21 misleading or, which by exercise of reasonable care should have been known to be untrue or
22 misleading, by issuing electronic smog certificates of compliance for the six vehicles, certifying
23 that those vehicles were in compliance with applicable laws and regulations when, in fact, those
24 vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the
25 allegations contained in paragraphs 38 through 44, above, as though set forth fully herein.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 46. Respondent Robert John Rains, DBA Ontario Smog's Automotive Repair Dealer
4 Registration is subject to disciplinary action pursuant to Business and Professions Code section
5 9884.7, subdivision (a)(4), in that he committed acts that constitute fraud by issuing electronic
6 certificates of compliance to the six vehicles, without performing bone fide inspections of the
7 emission control devices and systems on those vehicles, thereby depriving the People of the State
8 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
9 refers to, and by this reference incorporates, the allegations contained in paragraphs 38 through
10 44, above, as though set forth fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 47. Respondent Robert John Rains, DBA Ontario Smog's Automotive Repair Dealer
14 Registration is subject to disciplinary action pursuant to Business and Professions Code section
15 9884.7, subdivision (a)(6), in that he failed in a material respect to comply with the provisions of
16 this chapter or regulations adopted pursuant to it when he issued electronic certificates of
17 compliance for six vehicles set forth above, without performing bona fide inspections of the
18 emission control devices and systems on those vehicles, thereby depriving the People of the State
19 of 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 38 through
21 44, above, as though set forth fully herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 48. Respondent Robert John Rains, DBA Ontario Smog's Smog Check Test Only
25 Station License is subject to disciplinary action pursuant to Health and Safety Code section
26 44072.2, subdivision (a), in that he failed to comply with the following sections of that Code:

27 a. **Section 44012:** Respondent failed to ensure that the emission control tests
28 were performed on the six vehicles identified in paragraphs 38-44, above, in accordance with

1 procedures prescribed by the department.

2 b. **Section 44015, subdivision (b):** Respondent issued electronic smog
3 certificates of compliance to the six vehicles identified in paragraphs 38-44, above, without
4 properly testing and inspecting those vehicles to determine if they were in compliance with
5 Health and Safety Code section 44012.

6 Complainant refers to, and by this reference incorporates, the allegations contained in
7 paragraphs 38 through 44, above, as though set forth fully herein.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

11 49. Respondent Robert John Rains, DBA Ontario Smog's Smog Check Test Only
12 Station License is subject to disciplinary action pursuant to Health and Safety Code section
13 44072.2, subdivision (c); in that, he failed to comply with provisions of California Code of
14 Regulations, title 16, as follows:

15 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
16 issued electronic smog certificates of compliance for the six vehicles identified in paragraphs 38-
17 44, above.

18 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
19 the six vehicles identified in paragraphs 38-44, above, in accordance with Health and Safety Code
20 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

21 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog
22 certificates of compliance for the six vehicles identified in paragraphs 38-44, above, even though
23 those vehicles had not been inspected in accordance with section 3340.42.

24 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false
25 information into the emissions inspection system for the six vehicles identified in paragraphs 38-
26 44, above.

27 e. **Section 3340.42:** Respondent failed to ensure that the smog inspections
28 conducted on the six vehicles identified in paragraphs 38-44, above, were done in accordance

1 with the Bureau's specifications.

2 Complainant refers to, and by this reference incorporates, the allegations contained in
3 paragraphs 38 through 44, above, as though set forth fully herein.

4 **SIXTH CAUSE FOR DISCIPLINE**

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

6 50. Respondent Robert John Rains, DBA Ontario Smog's, Smog Check Test Only
7 Station License is subject to disciplinary action pursuant to Health and Safety Code section
8 44072.2, subdivision (d), in conjunction with Health and Safety Code section 44072.10,
9 subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby another was
10 injured by issuing electronic smog certificates of compliance for six vehicles without performing
11 bona fide inspections of the emission control devices and systems on those vehicles, thereby
12 depriving the People of the State of California of the protection afforded by the Motor Vehicle
13 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
14 contained in paragraphs 38 through 44, above, as though set forth fully herein.

15 **SEVENTH CAUSE FOR DISCIPLINE**

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

17 51. Respondent Rains' Smog Check Inspector License is subject to disciplinary action
18 pursuant to Health and Safety Code section 44072.2, subdivision (a), in that he failed to comply
19 with the following sections of that code:

20 a. **Section 44032:** Respondent failed to perform tests of emission control
21 devices and systems of six vehicles identified in paragraphs 38-44, above, in accordance with
22 Health and Safety Code section 44012.

23 b. **Section 44015, subdivision (b):** Respondent caused electronic smog
24 certificates of compliance to be issued for six vehicles identified in paragraphs 38-44, above,
25 without ensuring that they were properly tested and inspected to determine if they were in
26 compliance with Health and Safety Code section 44012.

27 Complainant refers to, and by this reference incorporates, the allegations contained in
28 paragraphs 38 through 44, above, as though set forth fully herein.

1 **EIGHTH CAUSE FOR DISCIPLINE**

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

4 52. Respondent Rains' Smog Check Inspector License is subject to disciplinary action
5 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that he failed to comply
6 with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently
8 issued electronic smog certificates of compliance for six vehicles identified in paragraphs 38-44,
9 above.

10 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test
11 six vehicles identified in paragraphs 38-44, above, in accordance with Health and Safety Code
12 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false
14 information into the emissions inspection system for six vehicles identified in paragraphs 38-44,
15 above.

16 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections
17 conducted on six vehicles identified in paragraphs 38-44, above, were done in accordance with
18 the Bureau's specifications.

19 Complainant refers to, and by this reference incorporates, the allegations contained in
20 paragraphs 38 through 44, above, as though set forth fully herein.

21 **NINTH CAUSE FOR DISCIPLINE**

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

23 53. Respondent Rains' Smog Check Inspector License is subject to disciplinary action
24 pursuant to Health and Safety Code section 44072.2, subdivision (d), in conjunction with Health
25 and Safety Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or
26 deceitful acts whereby another was injured by issuing electronic smog certificates of compliance
27 for six vehicles, without performing bona fide inspections of the emission control devices and
28 systems on those vehicles, thereby depriving the People of the State of California of the

1 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
2 reference incorporates, the allegations contained in paragraphs 38 through 44, above, as though
3 set forth fully herein.

4 **DISCIPLINARY CONSIDERATIONS**

5 54. To determine the degree of discipline, if any, to be imposed on Respondent Rains,
6 DBA Ontario Smog, Complainant alleges that effective June 19, 2020, Respondent was issued a
7 Decision and Order following a hearing in the consolidated citations captioned as: In the Matter
8 of the Citations Against: ROBERT JOHN RAINS, OWNER, DBA ONTARIO SMOG,
9 CITATION NUMBER C2019-1126 (OAH NO. 2019090651) AND CITATION NUMBER
10 M2019-1127 (OAH NO. 2019090652). Following an administrative hearing, the citations were
11 affirmed with a reduced penalty of \$500, a requirement to attend an eight-hour certified retraining
12 course, and the Order of Abatement to cease and desist from violating Health and Safety Code
13 section 44032. The circumstances were that on or about March 7, 2019, Respondent issued
14 Certificate of Compliance #IB912893C to a Bureau of Automotive Repair undercover vehicle
15 with the ignition timing adjusted beyond specifications.

16 **OTHER MATTERS**

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

22 56. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only
23 Station License No. TC 289295, issued to Respondent Rains, is revoked or suspended, any
24 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code
25 in the name of said licensee may be likewise revoked or suspended by the Director.

26 57. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
27 License No. EO 640653, issued to Respondent Rains, is revoked or suspended, any additional
28 license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety 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 the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number
ARD 289295, issued to Robert John Rains, DBA Ontario Smog;

2. Revoking or suspending any other automotive repair dealer registration issued to
Robert John Rains;

3. Revoking or suspending Smog Check Test Only Station License Number
TC 289295, issued to Robert John Rains, DBA Ontario Smog;

4. Revoking or suspending Smog Check Inspector License Number EO 640653,
issued to Robert John Rains;

5. 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 Robert John Rains;

6. Ordering Robert John Rains to pay the Bureau of Automotive Repair the
reasonable costs of the investigation and enforcement of this case, pursuant to Business and
Professions Code section 125.3; and,

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

DATED: As of digital signature date

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

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