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

13 In the Matter of the Accusation Against:

Case No. 79/21-8671

14 **SHANA LEE TUCKER**
15 **P.O. Box 97**
16 **Isleton, CA 95641**

ACCUSATION

17 **Smog Check Inspector License No. EO**
18 **640693**

Respondent.

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20
21 **PARTIES**

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

24 2. On or about October 30, 2017 the Bureau of Automotive Repair issued Smog Check
25 Inspector Number EO 640693 to Shana Lee Tucker (Respondent). The Smog Check Inspector
26 License was in full force and effect at all times relevant to the charges brought in this Accusation
27 and will expire October 31, 2023, unless renewed.
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JURISDICTION

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

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

5. Section 44002 of the Health and Safety Code 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.

6. Section 44072.6 of the Health and Safety Code 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.

7. Section 477 of the Code 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 Code.

STATUTORY PROVISIONS

8. Section 17500 of the Code states:

It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, 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, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal

property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

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

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

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

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

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

1 (h) An analysis of pass and fail rates of vehicles subject to an onboard
2 diagnostic test and a tailpipe test to assess whether any vehicles passing their onboard
3 diagnostic test have, or would have, failed a tailpipe test, and whether any vehicles
4 failing their onboard diagnostic test have or would have passed a tailpipe test.

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

10 10. Section 44032 of the Health and Safety Code states:

11 No person shall perform, for compensation, tests or repairs of emission control
12 devices or systems of motor vehicles required by this chapter unless the person
13 performing the test or repair is a qualified smog check technician and the test or
14 repair is performed at a licensed smog check station. Qualified technicians shall
15 perform tests of emission control devices and systems in accordance with Section
16 44012.

17 11. Section 44059 of the Health and Safety Code states:

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

23 12. Section 44072.2 of the Health and Safety Code states:

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

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

(b) Is convicted of any crime substantially related to the qualifications,
functions, and duties of the licenseholder in question.

(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.

(e) Has misrepresented a material fact in obtaining a license.

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

(g) Fails to make and keep records showing his or her transactions as a
licensee, or fails to have those records available for inspection by the director or his
or her duly authorized representative for a period of not less than three years after
completion of any transaction to which the records refer, or refuses to comply with a
written request of the director to make the records available for inspection.

1 (h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed.

2 13. Section 44072.10, subdivision (c) of the Health and Safety Code states:

3 (c) The department shall revoke the license of any smog check technician or
4 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
5 the following:

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

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

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

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

11 **REGULATORY PROVISIONS**

12 14. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

13 A smog check technician shall comply with the following requirements at all
times while licensed.

14 (a) A licensed technician shall inspect, test and repair vehicles in accordance
15 with section 44012 of the Health and Safety Code, section 44035 of the Health and
Safety Code, and section 3340.42 of this article.

16 15. California Code of Regulations, title 16, section 3340.41, subdivision (c) states:

17 (c) No person shall enter into the emissions inspection system any vehicle
18 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
19 emissions inspection system any false information about the vehicle being tested.

20 **COST RECOVERY**

21 16. Section 125.3 of the Code provides, in pertinent part, that a Board may request the
22 administrative law judge to direct a licensee 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
23 enforcement of the case.

24 **FACTUAL ALLEGATIONS**

25 17. In 2020, Respondent was employed as a smog check inspector at Smog Ventures,
26 d.b.a. Smog Star Express (Smog Star Express) in Walnut Creek, California.

1 18. On or about July 2, 2020, the president of Smog Star Express, informed the Bureau
2 that he suspected that on or about June 30, 2020, Respondent had illegally issued a Smog
3 Certificate of Compliance.

4 19. Beginning March 9, 2015, California's Smog Check Program was updated and
5 requires smog inspectors and stations to use the BAR On-Board Diagnostic Inspection System
6 (BAR-OIS) computer system during smog inspections, for most model year 2000 and newer
7 gasoline and hybrid vehicles, and most 1998 and newer diesel vehicles. The BAR-OIS consists
8 of a BAR-certified Data Acquisition Device (DAD), computer, bar code scanner, and printer.
9 The DAD is an interface box that connects the computer containing the BAR-OIS software to the
10 diagnostic link connector (DLC) of the vehicle being inspected. When requested by the BAR-
11 OIS software, the DAD retrieves data from the vehicle's on-board computer system (OBDII).
12 The bar code scanner is used to input the inspector's information, the vehicle's identification
13 number (VIN), and the vehicle's Department of Motor Vehicles (DMV) renewal information. At
14 the conclusion of the inspection, the printer provides a Vehicle Inspection Report (VIR) that
15 summarizes the inspection results and a Smog Check Certificate of Compliance for vehicles that
16 passed the inspection.

17 20. All data gathered during a smog inspection is transmitted to and retained in the
18 Bureau's Vehicle Information Database (VID).

19 21. During a BAR-OIS inspection, the following data points are recorded in the VID:
20 the vehicle's electronic Vehicle Identification Number (eVIN), the vehicle's communication
21 protocol (the specific language the vehicle's Power Control Module (PCM) uses to
22 communicate), and the vehicle's number of Parameter Identifications (PIDs) (the specific data
23 values each vehicle's PCM reports related to emissions controls).

24 22. The Bureau is aware that some smog check stations and smog check inspectors
25 fraudulently issue smog certificates to vehicles that cannot pass a smog check inspection by
26 "clean plugging" a vehicle. "Clean plugging" occurs when another vehicle's properly functioning
27 OBDII system or other source is used to generate passing data readings for the purpose of
28 fraudulently issuing a smog certificate to a vehicle that cannot pass a smog inspection.

23. Bureau representative MA reviewed the OIS data for Smog Star Express. MA identified one vehicle inspected by Respondent on June 30, 2020, that failed to transmit the expected eVIN, protocol, and PID count values. The OIS data transmitted during Respondent's inspection was inconsistent with the OIS data transmitted by similar vehicles and differed from the OIS data the vehicle transmitted during a previous inspection.

24. MA's review of Smog Star Express's OIS data indicated that on June 30, 2020, Respondent inspected a 2006 Jaguar X-Type with VIN SAJWA51AX6WE69909 and Smog Star Express issued smog certificate of compliance RM138997C for the vehicle. The OIS test data shows that during Respondent's inspection, an eVIN of 1FAFP42X62F115182 was reported, the communication protocol was listed as JPWM, and the PID count was 21. Comparative OIS test data for approximately 143 similar 2006 Jaguar X-Types show that 99.3% of the time they transmit their correct eVINs, they transmit a communication protocol of I914, and they transmit a PID count of 25.

a. Furthermore, on September 12, 2018, the same 2006 Jaguar X-Types was inspected using the BAR-OIS at another smog check facility. During that inspection, the correct eVIN of SAJWA51AX6WE69909 was transmitted, the communication was through the expected protocol of I914, and the expected PID count of 25 was transmitted

b. After further investigation, MA determined that the eVIN reported during Respondent's inspection of the 2006 Jaguar X-Type belonged to a 2002 Ford Mustang GT. The 2002 Ford Mustang GT was inspected on April 7, 2021, and an eVIN of 1FAFP42X62F115182 was reported, the communication protocol was listed as JPWM, and the PID count was 21, the same data that was reported during Respondent's June 30, 2020 inspection of the 2006 Jaguar X-Type. Respondent was the registered owner of the 2002 Ford Mustang according to the DMV's certified history for the vehicle.

FIRST CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspection Program)

25. Respondent has subjected her Smog Check Inspector License to discipline in that she violated sections of the Code and applicable regulations when she failed to connect a vehicle to

1 the BAR-OIS when it was being certified. (Health & Safe Code, § 44072.2, subds. (a), (c).) The
2 circumstances are further explained in paragraphs 17 to 24, above. The circumstances are as
3 follows:

4 a. **Health & Saf. Code, § 44012, subd. (f):** Respondent failed to follow test procedures
5 in accordance with the OIS specifications and failed to perform a functional inspection of
6 required equipment.

7 b. **Health & Saf. Code, § 44032:** Respondent failed to ensure that an emission control
8 test was performed in accordance with the procedures prescribed by the department.

9 d. **Cal. Code Regs., tit. 16, § 3340.30, subd. (a):** Respondent failed to inspect and test
10 a vehicle in accordance with Health & Safety Code sections 44012 and 44035, and California
11 Code of Regulations, title 16, section 3340.42.

12 f. **Cal. Code Regs., tit. 16, § 3340.41, subd. (c):** Respondent entered into the BAR-
13 OIS vehicle identification information or emission inspection information for a vehicle other than
14 the vehicle being inspected, and also entered false information for the vehicle being inspected.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Dishonesty, Fraud, or Deceit)

17 26. Respondent has subjected her Smog Check Inspector License to discipline in that she
18 committed an act involving dishonesty, fraud, or deceit, whereby another was injured, by issuing
19 a fraudulent certificate of compliance. (Health & Saf. Code, §§ 44072.2, subd. (d), 44072.10,
20 subd. (c).) The circumstances are further explained in paragraphs 17 to 24, above.

21 **OTHER MATTERS**

22 27. Pursuant to Health & Safety Code section 44072.8, Smog Check Inspector License
23 Number EO 640693 issued to Shana Lee Tucker is revoked or suspended, any additional license
24 issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said
25 licensee may be likewise revoked or suspended by the director.

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PRAYER

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

1. Revoking or suspending Smog Check Inspector Number EO 640693, issued to Shana Lee Tucker;
2. Revoking or suspending any other license issued under Chapter 5 of Part 5 of Division 26 in the name of Shana Lee Tucker;
3. Ordering Shana Lee Tucker 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
4. 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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