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8
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. 79/22-1335

14 **MICHAEL G. TEWELDE DBA**
15 **TM SMOG CHECK**
1075 A Santa Rosa Avenue
16 Santa Rosa, CA 95407
Mailing Address:
17 1597 Park Way Drive
Rohnert Park 94928
18 **Automotive Repair Dealer Registration No.**
ARD 298346; Smog Check, Test Only,
19 **Station License No. TC 298346;**

ACCUSATION

[SMOG CHECK]

20 **JIRA ELIJAH TURNER**
2600 Northcoast Street, #22G
21 Santa Rosa, CA 94503
Smog Check Inspector License No. EO
22 **643293;**

23 *and*

24 **EDGAR ANDRES HERNANDEZ COYAC**
17031 Cedar Avenue
25 Sonoma, CA 95476
Smog Check Inspector License No. EO
26 **643129**

27 Respondents.
28

1 **PARTIES**

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

4 2. On or about October 29, 2020, the Bureau issued Automotive Repair Dealer
5 Registration Number ARD 298346 to Michael G. Tewelde doing business as TM Smog Check
6 (Respondent Tewelde), and on or about December 9, 2020, the Bureau issued Smog Check, Test
7 Only, Station License No. TC 298346 to Respondent Tewelde. Both licenses were set to expire
8 on October 31, 2022, but were canceled effective February 10, 2022.

9 3. On or about September 20, 2021, the Bureau issued Smog Check Inspector License
10 No. EO 643293 to Jira Elija Turner (Respondent Turner). The license was in full force and effect
11 at all times relevant to the charges in the Accusation and is set to expire on December 31, 2023,
12 unless renewed.

13 4. On or about June 3, 2021, the Bureau issued Smog Check Inspector License No. EO
14 643129 to Edgar Andres Hernandez Coyac (Respondent Coyac). The license was in full force
15 and effect at all times relevant to the charges in the Accusation and is set to expire on October 31,
16 2023, unless renewed.

17 **JURISDICTION**

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

20 6. Section 477 of the Business and Professions Code provides, in pertinent part, that
21 "Board" includes "bureau," "commission," "committee," "department," "division," "examining
22 committee," "program," and "agency." "License" includes certificate, registration or other means
23 to engage in a business or profession regulated by the Code.

24 7. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that
25 the expiration of a valid registration shall not deprive the director or chief of jurisdiction to
26 proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision
27 invalidating a registration temporarily or permanently.
28

8. 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.

9. Section 44035, subdivision (a), of the Health and Safety Code states, in pertinent part:

"A smog check station's license or a qualified smog check technician's qualification may be suspended or revoked by the department, after a hearing, for failure to meet or maintain the standards prescribed for qualification, equipment, performance, or conduct."

10. 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.

STATUTORY PROVISIONS

11. Section 9884.7 of the Code states, in pertinent part:

(a) The director, if 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 that constitutes fraud.

• • •

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

12. Section 9884.11 states that:

“Each automotive repair dealer shall maintain any records that are required by regulations adopted to carry out this chapter. Those records shall be open for reasonable inspection by the chief or other law enforcement officials. All of those records shall be maintained for at least three years.”

1 13. Section 44012 of the Health and Safety Code states, in pertinent part:

2 "The test at the smog check stations shall be performed in accordance with procedures
3 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
4 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
5 and shall ensure all of the following:

6 . . .

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

11 14. Section 44032 of the Health and Safety Code provides that qualified technicians shall
12 perform tests of emission control devices and systems in accordance with Health and Safety Code
13 section 44012.

14 15. Section 44015, subdivision (b), of the Health and Safety Code states that if a vehicle
15 meets the requirements of Section 44012, a smog check station licensed to issue certificates shall
16 issue a certificate of compliance or a certificate of noncompliance.

17 16. Section 44072.2 of the Health and Safety Code states:

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

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

24 . . .

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

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

 . . .

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

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

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

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

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

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

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

REGULATORY PROVISIONS

18. California Code of Regulations, title 16, section 3340.15 states, in pertinent part:

"A smog check station shall meet the following requirements for licensure and shall comply with these requirements at all times while licensed.

(e) The station shall make, keep secure, and have available for inspection on request of the bureau, or its representative, legible records showing the station's transactions as a licensee for a period of not less than three years after completion of any transaction to which the records refer. All records shall be open for reasonable inspection and/or reproduction by the bureau or its representative. Station records required to be maintained shall include copies of:

(1) All certificates of compliance and certificates of noncompliance in stock and/or issued,

(2) Repair orders relating to the inspection and repair activities, and

(3) Vehicle inspection reports generated either manually or by the emissions inspection system.

The above listed station records shall be maintained in such a manner that the records for each transaction are kept together, so as to facilitate access to those records by the bureau or its representative. In this regard, the second copy of an issued certificate shall be attached to the final invoice record."

19. California Code of Regulations, 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."

20. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

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

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

21. California Code of Regulations, title 16, section 3340.35, subdivision (c), states that a licensed 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.

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

...

(c) No person shall enter any vehicle identification information or emission control system identification data for any vehicle other than the one 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.

23. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

...

(b) In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

...

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

24. California Code of Regulations, title 16, section 3340.45, states:

"All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference."

25. California Code of Regulations, title 16, section 3373 states:

"No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public."

COST RECOVERY PROVISION

26. Section 125.3 of the Code provides, in pertinent part, that a Board may request the 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 enforcement of the case.

FACTUAL BACKGROUND

27. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of the On Board Diagnostic Inspection System (“BAR-OIS”) instead of the Emission Inspection System (“EIS”) for most model year 2000 and newer gasoline and hybrid vehicles, and certain 1998 and newer diesel vehicles.¹ The BAR-OIS consists of a BAR-certified Data Acquisition Device (“DAD”), computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic (“OBD”) scan tool. The DAD is an interface box that connects the computer containing the BAR-OIS software to the diagnostic link connector (“DLC”) of the vehicle being inspected. When requested by the BAR-OIS software, the DAD retrieves data from the vehicle’s On Board Diagnostic, generation II, (“OBD II”) system.

28. The VIN that is physically present on all vehicles is also required to be programmed into the vehicle's OBD II computer on 2005 and newer vehicles, and on many occasions was programmed into the OBD II computer in earlier model-years. This electronically programmed VIN is referred to as the "eVIN" and is captured during a Smog Check. The eVIN should match the physical VIN on the vehicle.

¹ Use of the BAR-OIS for specified vehicles became mandatory on March 9, 2015, but the system was available for stations' optional use prior to that date.

29. The OBD II communication protocol describes the specified communication “language” used by the OBD II computer to communicate with the scan tools and other devices such as the BAR-OIS. The communication protocol is programmed into the OBD II computer during manufacture of the vehicle and does not change.

30. Parameter Identifications (“PIDs”) are data points reported by a vehicle’s OBD II system. Each make and model of vehicle reports a specific number of PIDs when it is being tested by the BAR-OIS. The PIDs Count is the number of data points reported by the OBD II system. The PIDs and PIDs Count are programmed during the manufacture of a vehicle.

31. The eVIN, the communication protocol, and PIDs Count are examples of the data collected by the BAR-OIS during a smog inspection. This information is transmitted to the vehicle information database (“VID”) during a smog inspection. The information obtained by the BAR-OIS software during a smog inspection is organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBD II Details, OBD II Readiness Monitor Status, and OBDII DTC Details.

32. “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 propose of issuing fraudulent smog certificates of compliance to vehicles that are not in compliance and/or not present for testing. The vehicle that is purportedly tested and issued a fraudulent certificate of compliance is known as the clean-plugged vehicle.

FACTUAL ALLEGATIONS

33. From on or about December 15, 2021, to on or about January 22, 2022, Respondent Tewelde issued five certificate of compliance to clean-plugged vehicles, with Respondent Turner performing the first four clean plugs using a 2017 Ford that was registered to him as the owner, and Respondent Coyac performing the fifth clean plug using a 2007 BMW 750.

34. It is clear that the vehicles certified by Respondents were not connected to the DAD during inspection because of discrepancies in the transmitted OIS data. The transmitted data that

were purportedly for the certified vehicles were different from what would be expected based on the vehicles' identification numbers or prior inspections of like vehicles, and therefore could not have come from the vehicles certified by Respondents as having passed smog inspection. The clean plugs are described in further detail in paragraphs 35 through 39, below.

35. On or about December 15, 2021, Respondent Turner clean-plugged a 2007 Chevrolet Tahoe K1500, fraudulently causing issuance of smog certificate SK617180C, as shown in the table below (Clean Plug 1).

Clean Plug 1	e-VIN	Protocol	PID Count
Reported OBD II Value	1FA6P8AM3H5214183	ICAN11bt5	<u>43</u>
Expected OBD II Value	1GNFK13087R199575	ICAN11bt5	44 or 44 7

36. On or about December 16, 2021, Respondent Turner clean-plugged a 2010 Volkswagen New Beetle, fraudulently causing issuance of smog certificate SK617184C, as shown in the table below (Clean Plug 2).

Clean Plug 2	e-VIN	Protocol	PID Count
Reported OBD II Value	1FA6P8AM3H5214183	ICAN11bt5	<u>43</u>
Expected OBD II Value	3VWPG3AG5AMO16598	ICAN11bt5	38 14, 40, or 40 14

37. On or about December 16, 2021, Respondent Turner clean-plugged a 2006 Honda Ridgeline RTL, fraudulently causing issuance of smog certificate SK617186C, as shown in the table below (Clean Plug 3).

Clean Plug 3	e-VIN	Protocol	PID Count
Reported OBD II Value	1FA6P8AM3H5214183	ICAN11bt5	<u>43</u>
Expected OBD II Value	2HJYK16596H553560	I914	24

38. On or about December 20, 2021, Respondent Turner clean-plugged a 2002 Lexus LS 430, fraudulently causing issuance of smog certificate SK855704C, as shown in the table below (Clean Plug 4).

Clean Plug 4	e-VIN	Protocol	PID Count
Reported OBD II Value	1FA6P8AM3H5214183	ICAN11bt5	<u>43</u>
Expected OBD II Value	Not Reported	I914	20

39. On or about January 20, 2022, Respondent Coyac clean-plugged a 2005 Chrysler 300 C, fraudulently causing issuance of smog certificate IN678342C, as shown in the table below (Clean Plug 5).

Clean Plug 5	e-VIN	Protocol	PID Count
Reported OBD II Value	WBAHN83507DT7054	KWPF	21 7
Expected OBD II Value	2C3AA63HX5H620626	ICAN11bt5	41 6 or 43 6

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

40. Respondent Tewelde's automotive repair dealer registration is subject to discipline for making untrue or misleading statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1)). The circumstances are set forth in paragraphs 35-39, above.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

41. Respondent Tewelde's automotive repair dealer registration is subject to discipline for fraud (Bus. & Prof. Code, § 9884.7, subd. (a)(4)). The circumstances are set forth in paragraphs 35-39, above.

THIRD CAUSE FOR DISCIPLINE

(Violation of Automotive Repair Act: False or Misleading Records)

42. Respondent Tewelde's automotive repair dealer registration is subject to discipline for violating the automotive repair act by creating false or misleading records (Bus. & Prof. Code, § 9884.7, subd. (a)(6), Cal. Code Regs., tit. 16, § 3373.) The circumstances are set forth in paragraphs 35-39, above.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspection Program)

43. Respondent Tewelde's smog check, test only station license, Respondent Turner's smog check inspector license, and Respondent Coyac's smog check inspector license, are subject to discipline for violation of the Motor Vehicle Inspection Program (Health & Saf. Code, § 44072.2, subsd. (a), (c), and (h)), in that Respondents committed the following violations, the

1 circumstances of which are set forth in paragraphs 35-39, above:

2 a. Respondents failed to follow test procedures in accordance with the OIS
3 specifications and failed to perform a functional inspection of required equipment (Health & Saf.
4 Code, § 44012, subd. (f));

5 b. Respondents failed to ensure that the emission control test was performed in
6 accordance with the procedures prescribed by the department (Health & Saf. Code, § 44032);

7 c. Respondents fraudulently issued a certificate of noncompliance (Cal. Code Regs., tit.
8 16, § 3340.24, subd. (c));

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

12 e. Respondents entered into the BAR-OIS vehicle information or emissions inspection
13 information for a vehicle other than the vehicle being inspected, and also entered false
14 information for the vehicle being inspected (Cal. Code Regs., tit. 16, § 3340.41, subd. (c)); and

15 f. Respondents failed to conduct the functional inspection in accordance with the smog
16 check manual referenced in California Code of Regulations, title 16, section 3340.45 (Cal. Code
17 Regs., tit. 16, § 3340.42, subd. (b)(2)).

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Dishonesty, Fraud, or Deceit; Fraudulent Inspections)**

20 44. Respondent Tewelde's smog check, test only station license, Respondent Turner's
21 smog check inspector license, and Respondent Coyac's smog check inspector license, are subject
22 to discipline committing acts involving dishonesty, fraud, or deceit, whereby another was injured
23 in that they committed fraudulent inspections (Health & Saf. Code, §§44072.2, subd. (d), and
24 44072.10, subd. (c)). As described in paragraphs 35-39 above, Respondents caused the issuance
25 of fraudulent certificates of compliance by clean-plugging vehicles.

26 **OTHER MATTERS**

27 45. Under Business and Professions Code section 9884.7, subdivision (c), the Director
28 may suspend, revoke, or place on probation the registration for all places of business operated in

1 this state by Michael G. Tewelde, upon a finding that Michael G. Tewelde engaged in a course of
2 repeated and willful violations of the laws and regulations pertaining to an automotive repair
3 dealer.

4 46. Under Health and Safety Code section 44072.8, if Smog Check, Test Only, Station
5 License No. TC 298346, issued to Respondent Michael G. Tewelde doing business as TM Smog
6 Check, is revoked or suspended, any additional license issued under Chapter 5, Part 5, Division
7 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or
8 suspended by the Director.

9 47. Under Health and Safety Code section 44072.8, if Smog check Inspector License No.
10 EO 643293, issued to Respondent Jira Elijah Turner, is revoked or suspended, any additional
11 license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in the name of
12 said licensee may be likewise revoked or suspended by the Director.

13 48. Under Health and Safety Code section 44072.8, if Smog check Inspector License No.
14 EO 643129, issued to Respondent Edgar Andres Hernandez Coyac is revoked or suspended, any
15 additional license issued under Chapter 5, Part 5, Division 26 of the Health and Safety Code in
16 the name of said licensee may be likewise revoked or suspended by the Director.

17 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
22 298346, issued to Michael G. Tewelde doing business as TM Smog Check;

23 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
24 298346, issued to Michael G. Tewelde doing business as TM Smog Check;

25 3. Revoking or suspending Smog Check Technician License Number EO 643293,
26 issued to Jira Elijah Turner;

27 4. Revoking or suspending Smog Check Technician License Number EO 643129,
28 issued to Edgar Hernandez Coyac;

1 5. Revoking or suspending the registration of any automotive repair dealership operated
2 by Michael G. Twelde;

3 6. Revoking or suspending any additional license issued under Health and Safety Code
4 Chapter 5, Part 5, Division 26, of the Health and Safety Code and in the name of Michael G.
5 Twelde, Jira Elijah Turner, or Edgar Hernandez Coyac;

6 7. Ordering Michael G. Twelde, Jira Elijah Turner, and Edgar Hernandez Coyac to pay
7 the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
8 this case, pursuant to Business and Professions Code section 125.3; and,

9 8. Taking such other and further action as deemed necessary and proper.

10
11
12 DATED: As of Digital Signature Date

13 PATRICK DORAIS
14 Chief
15 Bureau of Automotive Repair
16 Department of Consumer Affairs
17 State of California
18 *Complainant*

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