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7

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. 79/24-4730

13 **MICHAEL PASQUIER**
14 **DBA SERENITY SMOG**
15 712 N. 13th St., Unit 30
San Jose, CA 95112

ACCUSATION

16 **Alternate Address:**
2135 Little Orchard St., #93
17 San Jose, CA 95125

18 **Mailing Address:**
1741 Welch Ave., #2
19 San Jose, CA 95112

20 **Automotive Repair Dealer Registration No. ARD 307952**
21 **Smog Check Station, Test Only, License No. TC 307952**
Smog Check Inspector License No. EO 643710

22 Respondent.

23
24 **PARTIES**

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

27 2. On or about January 4, 2024, the Bureau issued Automotive Repair Dealer
28 Registration Number ARD 307952 to Michael Pasquier dba Serenity Smog (Respondent). The

1 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
2 charges brought herein and will expire on January 31, 2025, unless renewed.

3 3. On or about February 13, 2024, the Bureau issued Smog Check Station, Test Only,
4 License Number TC 307952 to Respondent. The Smog Check Station, Test Only, License was in
5 full force and effect at all times relevant to the charges brought herein and will expire on January
6 31, 2025, unless renewed.

7 4. On or about June 9, 2022, the Bureau issued Smog Check Inspector License Number
8 EO 643710 to Respondent. The Smog Check Inspector License was in full force and effect at all
9 times relevant to the charges brought herein and will expire on October 31, 2026, unless renewed.

10 **JURISDICTION**

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

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

17 **STATUTORY PROVISIONS**

18 7. Section 9884.7 of the Code states:

19 (a) The director, if the automotive repair dealer cannot show there was a bona
20 fide error, may deny, suspend, revoke, or place on probation the registration of an
21 automotive repair dealer for any of the following acts or omissions related to the
22 conduct of the business of the automotive repair dealer, which are done by the
23 automotive repair dealer or any automotive technician, employee, partner, officer, or
24 member of the automotive repair dealer:

25 (1) Making or authorizing in any manner or by any means whatever any
26 statement written or oral which is untrue or misleading, and which is known, or which
27 by the exercise of reasonable care should be known, to be untrue or misleading.

28 ...

(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.

...

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

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

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

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

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

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

8. Section 9884.13 of the Code 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.

9. 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.

10. 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, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

...

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

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

12. Section 44059 of the Health and Safety Code states:

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

13. 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 any investigation of, or action or disciplinary proceedings against the licensee, or to render a decision suspending or revoking the license.

14. Section 44072.8 of the Health and Safety Code 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.

15. Section 44072.2 of the Health and Safety Code states:

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.

...

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

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

(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:

(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

17. California Code of Regulations, title 16, section 3340.24, states:

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5 (commencing with section 11500) of division 3, Title 2 of the Government Code.

...

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

...

18. California Code of Regulations, title 16, section 3340.30, states:

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.

...

19. California Code of Regulations, title 16, section 3340.35, states:

...

(b) A licensed station shall not sell or otherwise transfer unused certificates to another licensed station, to a new owner of the business, or to any person other than a customer whose vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this article.

1 (c) A licensed station shall issue a certificate of compliance or noncompliance
2 to the owner or operator of any vehicle that has been inspected in accordance with the
3 procedures specified in section 3340.42 of this article and has all the required
4 emission control equipment and devices installed and functioning correctly. The
5 following conditions shall apply:

6 (1) Customers shall be charged the same price for certificates as that paid by
7 the licensed station; and

8 (2) Sales tax shall not be assessed on the price of certificates.

9 20. California Code of Regulations, title 16, section 3340.41, states:

10 ...

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

15 ...

16 (h) No licensed station shall have in the approved testing area at any time any
17 electronic device or software capable of simulating the OBD data stream from a
18 vehicle or manipulating OBD VIN, calibration identification, calibration verification
19 number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle
20 during a Smog Check Inspection.

21 ...

22 21. California Code of Regulations, title 16, section 3340.42, states:

23 Smog check inspection methods are prescribed in the Smog Check Manual,
24 referenced by section 3340.45.

25 (a) All vehicles subject to a smog check inspection, shall receive one of the
26 following test methods:

27 ...

28 (3) An OBD-focused test, shall be the test method used to inspect gasoline-
powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998
model-year and newer. The OBD test failure criteria are specified in section
3340.42.2.

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

(1) A visual inspection of emission control components and systems to verify
the vehicle's emission control systems are properly installed.

(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.

22. 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.

23. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading. Advertisements and advertising signs shall clearly show the following:

• • •

24. 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(f) 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

25. Section 125.3 of the Code provides, in pertinent part, that the 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

26. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance every two years when renewing their registration and also when the vehicle's title is transferred. These inspections are performed by Smog Check inspectors at Smog Check Stations, both of which are licensed by the Bureau.

27. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known

1 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon
2 Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of
3 the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a
4 vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed
5 Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a
6 dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute
7 (RPM).

8 28. The inspector also performs visual and functional tests on the vehicle as outlined in
9 the Smog Check Manual. The visual inspection of the emission control components verifies the
10 required emission control devices are present and properly connected. Functional tests are also
11 performed which, depending on the vehicle, may include checking the ignition timing,
12 malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low-pressure test
13 of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas
14 cap.

15 29. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
16 the use of the On Board Diagnostic Inspection System (OIS) instead of the EIS for the smog
17 testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles. Most
18 older vehicles require the ASM or TSI test on the EIS. Gas powered vehicles with a gross vehicle
19 weight rating over 14,000 pounds require an inspection on the EIS.

20 30. The newer OIS smog inspection uses a Data Acquisition Device (DAD), a computer,
21 a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On
22 Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR OIS computer
23 to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar
24 code scanner is used to input technician information, the vehicle identification number (VIN), and
25 DMV renewal information. The printer is used to print Vehicle Inspection Reports.

26 31. Data retrieved and recorded during an OIS smog check includes: the eVIN, which is
27 the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the
28 communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses

1 to relay information; and the number of Parameter Identifications (PIDs), which is the number of
2 specific data values each PCM uses related to emissions controls.

3 32. PIDs are data points reported by the vehicle on-board computer to a scan tool or
4 BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other
5 input and output values utilized by the vehicle's on-board computer.

6 33. As part of the OIS smog inspections, the technician also performs a visual and
7 functional test on the vehicle being inspected. The visual inspection of the emission control
8 components verifies the required emission control devices are present and properly connected and
9 a functional test is performed of the malfunction indicator light (MIL). The OIS software makes
10 the determination whether or not the vehicle passes the inspection based on the results of the
11 OBD, visual and functional tests. If the vehicle passes the inspection a certificate of compliance
12 is issued. The information from the smog inspection is then transmitted to the Vehicle
13 Information Data (VID).

14 34. The Bureau can access the VID to view test data on smog check inspections
15 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
16 particular vehicle which has been tested. The VID has an internal clock that is set to Pacific
17 Standard Time and records the time and date for each inspection. If a vehicle passes the Smog
18 Inspection, the vehicle information and test results are electronically transmitted to Department of
19 Motor Vehicles.

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

- 24 a. Engine speed in revolutions per minute (RPM),
- 25 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
- 26 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
- 27 to 100% at full throttle.
- 28

1 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
2 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
3 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,
4 and 101 kpa at full throttle (atmospheric pressure at sea level).

5 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
6 air intake tract. Air flow is measured in grams per second (gps).

7 36. During an OIS Smog Check inspection, along with other visual and functional
8 inspections, there is an OBD II query portion of the inspection. The OBD II query is performed
9 with the engine idling and, when requested by the OIS analyzer, with an elevated or increased
10 engine speed. The increase in engine speed is performed by the inspector either stepping on the
11 throttle pedal or manually opening the throttle. The inspector's stepping on the throttle pedal or
12 manually opening the throttle results in a corresponding increase in engine RPMs by allowing an
13 increase in airflow into the engine. An increase in throttle, measured by the TPS, which increases
14 engine RPM, would result in a corresponding increase in MAF, as well as a change in MAP.
15 Stated another way, any movement in the throttle from the idle position will result in an increase
16 of airflow through the engine with corresponding increases in RPM and MAF, along with
17 changes in MAP.

18 37. The Bureau has become aware of methods some Smog Check stations and Smog
19 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test
20 on their own, or in some instances, are not even present during the time the test is performed.

21 38. One method is known as "clean plugging." "Clean plugging" is the act of using one
22 vehicle's properly functioning OBDII system, or another source such as an electronic defeat
23 device, to generate passing data readings or diagnostic information for the purpose of issuing a
24 smog certificate of compliance to a vehicle that is not in smog compliance and/or not being
25 tested. The vehicle being certified is not being tested.

26 39. Defeat devices attempt to simulate engine operation during a Smog Check inspection
27 by transmitting OBD II data to the VID which has been modified or replaced entirely for the
28

purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

40. On or about March 5, 2024, through March 21, 2024, a Bureau representative conducted a detailed review of the VID data for the Smog Check inspections performed at Serenity Smog, dated from March 1, 2024, through March 21, 2024. The review showed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation. Those vehicles received smog certificates but were not tested during the OBD II functional test. They were clean plugged.

41. Respondent clean plugged and issued certificates of compliance to 10 Vehicles using an electronic defeat device and a vehicle simulator computer program. None of the 10 vehicles that were issued a certificate of compliance were legitimately inspected. All of the “inspections” were performed at Respondent’s smog check station Serenity Smog. Respondent issued all of the certificates of compliance. All 10 of the vehicles were tested and certified under Respondent’s Smog Inspector license.

Clean Plug 1:

42. On or about March 5, 2024, Respondent issued smog certificate # IZ456862C to a 2001 Ford F150, VIN # 1FTRF17W81NA81095. The smog certificate was issued under Respondent’s Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

43. The Dynamic PID Chart for the 2001 Ford F150 shows between time stamp 334 and 16339, engine speed was steady at around 950 RPM. During this time, the throttle was fixed at 20% opening. The MAF was fixed at 4.06gps. Between time stamp 17070 and 33434, the engine speed was accelerated and then held steady at around 1800 RPM. During the steady elevated engine RPM, the throttle was fixed at 20% opening. The MAF was fixed at 4.06gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 2:

44. On or about March 5, 2024, Respondent issued smog certificate # IZ456864C to a 2001 Ford F150 Supercrew, VIN # 1FTRW07L11KA30846. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

45. The Dynamic PID Chart for the 2001 Ford F150 Supercrew shows between time stamp 341 and 18380, engine speed was steady at around 750 RPM. During this time, the throttle was fixed at 18.4% opening. The MAF was fixed at 5.91gps. Between time stamp 18759 and 34675, the engine speed was accelerated and then held steady at around 1900 RPM. During the steady elevated engine RPM, the throttle was fixed at 18.4% opening. The MAF was fixed at 5.91gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 3:

46. On or about March 8, 2024, Respondent issued smog certificate # IZ456878C to a 2003 Ford F350 SRW Super Duty, VIN # 1FTSF30S33EA53714. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

47. The Dynamic PID Chart for the 2003 Ford F350 shows between time stamp 363 and 15384, engine speed was steady at around 800 RPM. During this time, the throttle was fixed at 20% opening. The MAF was fixed at 8.74gps. Between time stamp 17861 and 35075, the engine speed was accelerated and then held steady at around 1800 RPM. During the steady elevated engine RPM, the throttle was fixed at 20% opening. The MAF was fixed at 8.74gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 4:

48. On or about March 8, 2024, Respondent issued smog certificate # IZ456890C to a 2000 Jeep Grand Cherokee Laredo, VIN # 1J4GW48S5YC361738. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

49. The Dynamic PID Chart for the 2000 Jeep Grand Cherokee Laredo shows between time stamp 375 and 30136, engine speed was steady at around 600 RPM. During this time, the throttle was fixed at 16.9% opening. The MAP was fixed at 41kpa. Between time stamp 31239 and 47647, the engine speed was accelerated and then held steady at around 1600 RPM. During the steady elevated engine RPM, the throttle was fixed at 16.9% opening. The MAP was fixed at 41kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAP readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 5:

50. On or about March 15, 2024, Respondent issued smog certificate # TU228835C to a 2004 Hyundai Elantra GLS, VIN # KMHDN46D94U793796. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

51. The Dynamic PID Chart for the 2004 Hyundai Elantra shows between time stamp 2147 and 28188, engine speed was steady at around 650 RPM. During this time, the throttle was fixed at 5.9% opening. The MAF was fixed at 2.19gps. Between time stamp 34671 and 58501, the engine speed was accelerated and then held steady at around 2300 RPM. During the steady elevated engine RPM, the throttle was fixed at 5.9% opening. The MAF was fixed at 2.19gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 6:

52. On or about March 20, 2024, Respondent issued smog certificate # TU338702C to a 2000 Honda Civic EX, VIN # 2HGEJ8542YH510968. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

53. The Dynamic PID Chart for the 2000 Honda Civic shows between time stamp 885 and 19953, engine speed was steady at around 800 RPM. During this time, the throttle was fixed at 9.8% opening. The MAP was fixed at 26kpa. Between time stamp 20841 and 40044, the engine speed was accelerated and then held steady at around 1650 RPM. During the steady elevated engine RPM, the throttle was fixed at 9.8% opening. The MAP was fixed at 26kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAP readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 7:

54. On or about March 20, 2024, Respondent issued smog certificate # TU338706C to a 2005 Volkswagen GTI, VIN # 9BWDE61J554009571. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

55. The Dynamic PID Chart for the 2005 Volkswagen GTI shows between time stamp 855 and 21832, engine speed was steady at around 800 RPM. During this time, the throttle was fixed at 11.4% opening. The MAF was fixed at 2.25gps. Between time stamp 22687 and 41008, the engine speed was accelerated and then held steady at around 1850 RPM. During the steady elevated engine RPM, the throttle was fixed at 11.4% opening. The MAF was fixed at 2.25gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 8:

56. On or about March 20, 2024, Respondent issued smog certificate # TU338709C to a 2005 Toyota Sienna CE, VIN # 5TDZA23C05S358371. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

57. The Dynamic PID Chart for the 2005 Toyota Sienna shows between time stamp 855 and 20010, engine speed was steady at around 900 RPM. During this time, the throttle was fixed at 16.9% opening. The MAF was fixed at 4.28gps. Between time stamp 20908 and 40054, the engine speed was accelerated and then held steady at around 1800 RPM. During the steady elevated engine RPM, the throttle was fixed at 16.9% opening. The MAF was fixed at 4.28gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 9:

58. On or about March 21, 2024, Respondent issued smog certificate # TU338715C to a 2004 Chevrolet Silverado C1500, VIN # 1GCEC14X54Z187683. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

59. The Dynamic PID Chart for the 2004 Chevrolet Silverado C1500 shows between time stamp 333 and 17823, engine speed was steady at around 750 RPM. During this time, the throttle was fixed at 5.5% opening. The MAP was fixed at 36kpa, and the MAF was fixed at 5.82gps. Between time stamp 18208 and 34540, the engine speed was accelerated and then held steady at around 2000 RPM. During the steady elevated engine RPM, the throttle was fixed at 5.5% opening. The MAP was fixed at 36kpa, and the MAF was fixed at 5.82gps. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAP and

MAF readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

Clean Plug 10:

60. On or about March 21, 2024, Respondent issued smog certificate # TU338717C to a 2001 Honda Civic SI, VIN # 1HGEM22951L010266. The smog certificate was issued under Respondent's Smog Check Inspector License # EO 643710. However, a legitimate smog inspection was not performed on the vehicle. Respondent did not connect the OIS DAD to this vehicle and issued a fraudulent certificate of compliance to this vehicle.

61. The Dynamic PID Chart for the 2001 Honda Civic shows between time stamp 844 and 20038, engine speed was steady at around 900 RPM. During this time, the throttle was fixed at 9.4% opening. The MAP was fixed at 80kpa. Between time stamp 20896 and 39187, the engine speed was accelerated and then held steady at around 1775 RPM. During the steady elevated engine RPM, the throttle was fixed at 9.4% opening. The MAP was fixed at 80kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle positions, and the fixed MAP readings associated with the same engine speeds and throttle parameters, are not characteristic or expected for normal engine operation.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

62. Respondent's Automotive Repair Dealer Registration is subject to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in paragraphs 37-61, above. Respondent purported to test vehicles, and certified that the vehicles passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles using clean plugging methods.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud - Registration)**

3 63. Respondent's Automotive Repair Dealer Registration is subject to discipline under
4 Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud, as set
5 forth above in paragraphs 37-61, above.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(False or Misleading Records - Registration)**

8 64. Respondent's Automotive Repair Dealer Registration is subject to discipline under
9 Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations, title
10 16, section 3373, by creating and issuing false or misleading certificates of compliance and
11 vehicle inspection reports for the 10 vehicles that were clean plugged, as set forth above in
12 paragraphs 37-61, above. The certificates and inspection reports falsely indicated the vehicles
13 were tested in accordance with all Bureau requirements and the vehicles were qualified to receive
14 certificates of compliance.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Dishonesty, Fraud or Deceit – Smog Licenses)**

17 65. Respondent's Smog Check Station License and Smog Check Inspector License are
18 subject to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision
19 (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another was injured
20 by issuing electronic certificates of compliance for vehicles without performing bona fide
21 inspections of the emission control devices and systems on the vehicles, thereby depriving the
22 People of the State of California the protection afforded by the Motor Vehicle Inspection
23 Program, as set forth above in paragraphs 37-61, above.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violation of the Motor Vehicle Inspection Program - Smog Licenses)**

26 66. Respondent's Smog Check Station License and Smog Check Inspector License are
27 subject to discipline under Health and Safety Code sections 44072.10 and/or 44072.2,
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subdivisions (a) and (c), in that he violated sections of that Code and/or applicable regulations, through conduct described in paragraphs 37-61, as follows:

a. **Health and Safety Code Section 44012:** Respondent failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed by the department.

b. **Health and Safety Code Section 44059:** Respondent willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

c. **Code of Regulations, title 16, Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic certificates of compliance to certain vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles.

d. **Code of Regulations, title 16, Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations title 16, section 3340.42.

e. **Code of Regulations, title 16, Section 3340.41, subdivision (c):** Respondent entered false information about vehicles being tested into OIS.

f. **Code of Regulations, title 16, Section 3340.41, subdivision (h):** Respondent had electronic devices and/or software capable of simulating the OBD data stream from a vehicle and/or manipulating OBD VIN, calibration identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection in the approved testing area of the station.

g. **Code of Regulations, title 16, Section 3340.42:** Respondent failed to conduct the required smog tests and inspections on certain vehicles in accordance with the Bureau's specifications.

h. **Code of Regulations, title 16, Section 3340.45:** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for a vehicle that was not being tested.

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OTHER MATTERS

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

68. Pursuant to Health & Safety Code section 44072.8, if a license issued to Respondent is revoked or suspended following a hearing, any additional 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.

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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 307952, issued to Michael Pasquier dba Serenity Smog;
2. Revoking or suspending any other Automotive Repair Dealer Registration(s) issued to Michael Pasquier;
3. Revoking or suspending Smog Check Station, Test Only, License Number TC 307952, issued to Michael Pasquier dba Serenity Smog;
4. Revoking or suspending Smog Check Inspector License Number EO 643710, issued to Michael Pasquier;
5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Respondent Michael Pasquier;
6. Ordering Michael Pasquier 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, if placed on probation, the costs of probation monitoring; 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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