

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF AUTOMOTIVE REPAIR
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 79/16-11174

BRYAN A. WHITE

OAH No.: 2018100311

dba, FIC SMOG

322 N. El Camino Real Suite C

Encinitas, CA 92024

Automotive Repair Dealer Registration No.:

ARD 225452

Smog Check Station License No.: TC 225452

and

BRYAN ANTHONY WHITE

322 N. El Camino Real Suite C

Encinitas, CA 92024

Smog Check Inspector License No.: EO 146945

Smog Check Repair Technician License No.: EI
146945

and

JOE HOANG FARRIES

322 N. El Camino Real Suite C

Encinitas, CA 92024

1441 Reed Ave. 27 (Mailing)

San Diego, CA 92109

Smog Check Inspector License No. EO 152881

Respondents.

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DECISION

The attached Stipulated Settlement and Disciplinary Order AS TO RESPONDENT BRYAN A. WHITE dba FIC SMOG, ONLY is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective June 7, 2019.

DATED: April 18, 2019



GRACE ARUPO RODRIGUEZ
Assistant Deputy Director
Legal Affairs Division
Department of Consumer Affairs

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

13 **BRYAN A. WHITE,**
14 **DBA FIC SMOG**
15 **322 N. El Camino Real Suite C**
16 **Encinitas, CA 92024**

17 **Automotive Repair Dealer Registration No.**
18 **ARD 225452**
19 **Smog Check Test Only Station License No.**
20 **TC 225452,**

21 **and**

22 **BRYAN ANTHONY WHITE**
23 **322 N. El Camino Real Suite C**
24 **Encinitas, CA 92024**

25 **Smog Check Inspector License No.**
26 **EO 146945**
27 **Smog Check Repair Technician License No.**
28 **EI 146945**

and

JOE HOANG FARRIES
322 N. El Camino Real Suite C
Encinitas, CA 92024

Mailing Address:
1441 Reed Ave.
San Diego, CA 92109

Case No. 79/16-11174

OAH No. 2018100311

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER—BRYAN
ANTHONY WHITE DBA FIC SMOG
ONLY

License No. ARD 225452

License No. TC 225452

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**Smog Check Inspector License No.
EO 152881**

Respondents.

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibilities of the Director of Consumer Affairs and the Bureau of Automotive Repair, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Director for the Director's approval and adoption as the final disposition of the Accusation solely with respect to Bryan Anthony White, dba FIC Smog. It does not apply to Joe Hoang Farries.

PARTIES

1. Patrick Dorais (Complainant) is the Chief of the Bureau of Automotive Repair (Bureau). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Stephen A. Aronis, Deputy Attorney General.

Bryan Anthony White, dba FIC Smog

2. Respondent Bryan Anthony White, dba FIC Smog (Respondent) is represented in this proceeding by attorney Adam Brown.

3. In 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 225452 to Bryan Anthony White, dba FIC Smog, (Respondent). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2019, unless renewed.

4. On or about March 13, 2003, the Bureau of Automotive Repair issued Smog Check-Test Only Station License Number TC 225452 to Bryan Anthony White, dba FIC Smog, (Respondent). The Smog Check-Test Only Station License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2019, unless renewed.

1 5. FIC Smog became a STAR certified testing facility on May 31, 2013. The STAR
2 certification will remain active unless the Automotive Repair Dealer Registration and/or Smog
3 Check, Test Only Station License are revoked, cancelled, become delinquent, or the certification
4 is otherwise invalidated.

5 **Bryan Anthony White**

6 6. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist
7 Technician License Number EA 146945 to Bryan Anthony White (Respondent). The Advanced
8 Emission Specialist Technician License was cancelled on March 19, 2013. Pursuant to California
9 Code of Regulations, title 16 section 3340.28(e), said license was renewed pursuant to
10 Respondent White's election as Smog Check Inspector License Number EO 146945, and Smog
11 Check Repair Technician License Number EI 146945.¹ The Smog Check Inspector License (EO
12 146945) was in full force and effect at all times relevant to the charges brought herein and will
13 expire on March 31, 2019, unless renewed. The Smog Check Repair Technician License (EI
14 146945) expired on March 31, 2015, and has not been renewed. This stipulated disciplinary order
15 shall have no effect on License Numbers EO 146945 and EI 146945.

16 **JURISDICTION**

17 7. Accusation No. 79/16-11174 was filed before the Director, and is currently pending
18 against Respondent. The Accusation and all other statutorily required documents were properly
19 served on Respondent on July 3, 2018. Respondent timely filed his Notice of Defense contesting
20 the Accusation.

21 8. A copy of Accusation No. 79/16-11174 is attached as Exhibit A and incorporated
22 herein by reference.

23 **ADVISEMENT AND WAIVERS**

24 9. Respondent has carefully read, fully discussed with counsel, and understands the
25 charges and allegations in Accusation No. 79/16-11174. Respondent has also carefully read, fully
26

27 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
28 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
2 Order.

3 10. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
5 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
6 to the issuance of subpoenas to compel the attendance of witnesses and the production of
7 documents; the right to reconsideration and court review of an adverse decision; and all other
8 rights accorded by the California Administrative Procedure Act and other applicable laws.

9 11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
10 every right set forth above.

11 CULPABILITY

12 12. Respondent admits the truth of each and every charge and allegation in Accusation
13 No. 79/16-11174.

14 13. Respondent agrees that his Automotive Repair Dealer Registration, and his Smog
15 Check-Test Only Station License, are subject to discipline and he agrees to be bound by the
16 Director's probationary terms as set forth in the Disciplinary Order below.

17 CONTINGENCY

18 14. This stipulation shall be subject to approval by the Director of Consumer Affairs or
19 the Director's designee. Respondent understands and agrees that counsel for Complainant and the
20 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of
21 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to
22 or participation by Respondent or his counsel. By signing the stipulation, Respondent
23 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
24 prior to the time the Director considers and acts upon it. If the Director fails to adopt this
25 stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
26 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
27 the parties, and the Director shall not be disqualified from further action by having considered
28 this matter.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 225452, and Smog Check-Test Only Station License No. TC 225452, issued to Respondent Bryan Anthony White, dba FIC Smog are revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Obey All Laws.** During the period of probation, Respondent shall comply with all federal and state statutes, regulations and rules governing all BAR registrations and licenses held by Respondent.

2. **Posting of Sign.** During the period of suspension, Respondent shall prominently post a sign or signs, provided by BAR, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign or signs shall be conspicuously displayed in a location or locations open to and frequented by customers. The location(s) of the sign(s) shall be approved by BAR and shall remain posted during the entire period of actual suspension.

3. **Quarterly Reporting.** During the period of probation, Respondent shall report either by personal appearance or in writing as determined by BAR on a schedule set by BAR, but no more frequently than once each calendar quarter, on the methods used and success achieved in

1 maintaining compliance with the terms and conditions of probation.

2 4. **Report Financial Interests.** Respondent shall, within 30 days of the effective date
3 of the decision and within 30 days from the date of any request by BAR during the period of
4 probation, report any financial interest which any Respondent or any partners, officers, or owners
5 of any Respondent facility may have in any other business required to be registered pursuant to
6 Section 9884.6 of the Business and Professions Code.

7 5. **Access to Examine Vehicles and Records.** Respondent shall provide BAR
8 representatives unrestricted access to examine all vehicles (including parts) undergoing service,
9 inspection, or repairs, up to and including the point of completion. Respondent shall also provide
10 BAR representatives unrestricted access to all records pursuant to BAR laws and regulations.

11 6. **Tolling of Probation.** If, during probation, Respondent leaves the jurisdiction of
12 California to reside or do business elsewhere or otherwise ceases to do business in the jurisdiction
13 of California, Respondent shall notify BAR in writing within 10 days of the dates of departure
14 and return, and of the dates of cessation and resumption of business in California. All provisions
15 of probation other than cost reimbursement requirements, restitution requirements, training
16 requirements, and that Respondent obey all laws, shall be held in abeyance during any period of
17 time of 30 days or more in which Respondent is not residing or engaging in business within the
18 jurisdiction of California. All provisions of probation shall recommence on the effective date of
19 resumption of business in California. Any period of time of 30 days or more in which Respondent
20 is not residing or engaging in business within the jurisdiction of California shall not apply to the
21 reduction of this probationary period or to any period of actual suspension not previously
22 completed. Tolling is not available if business or work relevant to the probationary license or
23 registration is conducted or performed during the tolling period.

24 7. **Violation of Probation.** If Respondent violates or fails to comply with the terms and
25 conditions of probation in any respect, the Director, after giving notice and opportunity to be
26 heard may set aside the stay order and carry out the disciplinary order provided in the decision.
27 Once Respondent is served notice of BAR's intent to set aside the stay, the Director shall
28 maintain jurisdiction, and the period of probation shall be extended until final resolution of the

1 matter.

2 **8. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
3 a current and active registration and/or license(s) with BAR, including any period during which
4 suspension or probation is tolled. If Respondent's registration or license is expired at the time the
5 decision becomes effective, the registration or license must be renewed by Respondent within 30
6 days of that date. If Respondent's registration or license expires during a term of probation, by
7 operation of law or otherwise, then upon renewal Respondent's registration or license shall be
8 subject to any and all terms and conditions of probation not previously satisfied. Failure to
9 maintain a current and active registration and/or license during the period of probation shall also
10 constitute a violation of probation.

11 **9. Cost Recovery.** Respondent shall pay the Bureau of Automotive Repair \$2,730.80
12 for the reasonable costs of the investigation and enforcement of case No. 79/16-11174.
13 Respondent shall make such payment as follows: 48 equal monthly payments with the final
14 payment due no later than 12 months before probation ends. Respondent shall make payment by
15 check or money order payable to the Bureau of Automotive Repair and shall indicate on the
16 check or money order that it is for cost recovery payment for case No. 79/16-11174. Any order
17 for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation
18 shall not terminate until full cost recovery payment has been made. BAR reserves the right to
19 pursue any other lawful measures in collecting on the costs ordered and past due, in addition to
20 taking action based upon the violation of probation.

21 **10. Completion of Probation.** Upon successful completion of probation, Respondent's
22 affected registration and/or license will be fully restored or issued without restriction, if
23 Respondent meets all current requirements for registration or licensure and has paid all
24 outstanding fees, monetary penalties, or cost recovery owed to BAR.

25 **11. Actual Suspension.** Automotive Repair Dealer Registration No. ARD 225452, and
26 Smog Check-Test Only Station License No. TC 225452, issued to Respondent Bryan Anthony
27 White, dba FIC Smog, are suspended for 7 consecutive days beginning on the effective date of
28 the Decision and Order.

ACCEPTANCE

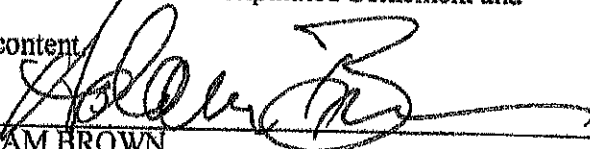
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Adam Brown. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration, and Smog Check-Test Only Station License, and STAR Station Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED: 3/29/19


BRYAN ANTHONY WHITE,
DBA FIC SMOG
Respondent

I have read and fully discussed with Respondent Bryan Anthony White, dba FIC Smog the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 3-29-19


ADAM BROWN
Attorney for Respondent


ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 3/29/19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General


STEPHEN A. ARONIS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 79/16-11174

1 XAVIER BECERRA
Attorney General of California
2 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
3 STEPHEN A. ARONIS
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7 Facsimile: (619) 645-2581
Attorneys for Complainant

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 79/16-11174

12 **BRYAN A. WHITE,**
13 **DBA FIC SMOG**
14 **322 N. El Camino Real Suite C**
Encinitas, CA 92024

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
ARD 225452
16 **Smog Check Test Only Station License No.**
TC 225452,

17 **and**

18 **BRYAN ANTHONY WHITE**
19 **322 N. El Camino Real Suite C**
20 **Encinitas, CA 92024**

21 **Smog Check Inspector License No.**
EO 146945
22 **Smog Check Repair Technician License No.**
EI 146945

23 **and**

24 **JOE HOANG FARRIES**
25 **322 N. El Camino Real Suite C**
Encinitas, CA 92024

26 **Mailing Address:**
27 **1441 Reed Ave.**
San Diego, CA 92109

1 **Smog Check Inspector License No.**
2 **EO 152881**

3 Respondents.

4
5 Complainant alleges:

6 **PARTIES**

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

9 **Bryan A. White, dba FIC Smog**

10 2. In 2003, the Bureau of Automotive Repair issued Automotive Repair Dealer
11 Registration Number ARD 225452 to Bryan A. White, dba FIC Smog, (Respondent). The
12 Automotive Repair Dealer Registration was in full force and effect at all times relevant to the
13 charges brought herein and will expire on December 31, 2018, unless renewed.

14 3. On or about March 13, 2003, the Bureau of Automotive Repair issued Smog Check-
15 Test Only Station License Number TC 225452 to Bryan A. White, dba FIC Smog, (Respondent).
16 The Smog Check-Test Only Station License was in full force and effect at all times relevant to the
17 charges brought herein and will expire on December 31, 2018, unless renewed.

18 4. FIC Smog became a STAR certified testing facility on May 31, 2013. The STAR
19 certification will remain active unless the Automotive Repair Dealer Registration and/or Smog
20 Check, Test Only Station License are revoked, cancelled, become delinquent, or the certification
21 is otherwise invalidated.

22 **Bryan Anthony White**

23 5. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist
24 Technician License Number EA 146945 to Bryan Anthony White (Respondent White). The
25 Advanced Emission Specialist Technician License was cancelled on March 19, 2013. Pursuant to
26 California Code of Regulations, title 16 section 3340.28(e), said license was renewed pursuant to
27 Respondent White's election as Smog Check Inspector License Number EO 146945, and Smog
28 Check Repair Technician Number EI 146945. The Smog Check Inspector License was in full

1 force and effect at all times relevant to the charges brought herein and will expire on March 31,
2 2019, unless renewed. The Smog Check Repair Technician expired on March 31, 2015, and has
3 not been renewed.¹

4 **Joe Hoang Farries**

5 6. In 2006, the Bureau of Automotive Repair issued Advanced Emission Specialist
6 Technician License Number EA 152881 to Joe Hoang Farries (Respondent Farries). The
7 Advanced Emission Specialist Technician License was cancelled on May 12, 2014. Pursuant to
8 California Code of Regulations, title 16 section 3340.28(e), said license was renewed pursuant to
9 Respondent Farries' election as Smog Check Inspector License Number EO 152881. The Smog
10 Check Inspector License was in full force and effect at all times relevant to the charges brought
11 herein and will expire on May 31, 2020, unless renewed.

12 **JURISDICTION**

13 7. This Accusation is brought before the Director of the Department of Consumer
14 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
15 All references are to the Business and Professions Code (Code) unless otherwise stated.

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

20 9. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a
21 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
22 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
23 registration temporarily or permanently.

24 ///

25 ///

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

10. Section 9884.20 of the Code states:

All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.

11. Section 9884.22 of the Code, subdivision (a) states, in pertinent part:

(a) Notwithstanding any other provision of law, the director may revoke, suspend, or deny at any time any registration required by this article on any of the grounds for disciplinary action provided in this article. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

12. 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.

13. Health and Safety Code section 44072.4 states:

The director may take disciplinary action against any licensee after a hearing as provided in this article by any of the following:

- (a) Imposing probation upon terms and conditions to be set forth by the director.
- (b) Suspending the license.
- (c) Revoking the license.

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

15. Health and Safety Code section 44072.7 states:

All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 44072.2, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.

16. 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

17. Section 22 of the Code states:

'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

18. Section 23.7 of the Code states:

Unless otherwise expressly provided, "license" means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

19. Section 9884.7 of the Code 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.

....

(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.

1 20. Section 44012 of the Health and Safety Code states:

2 The test at the smog check stations shall be performed in accordance with
3 procedures prescribed by the department and may require loaded mode
4 dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a
5 vehicle's onboard diagnostic system, or other appropriate test procedures as
6 determined by the department in consultation with the state board. The
7 department shall implement testing using onboard diagnostic systems, in lieu of
8 loaded mode dynamometer or two-speed idle testing, on model year 2000 and
9 newer vehicles only, beginning no earlier than January 1, 2013. However, the
10 department, in consultation with the state board, may prescribe alternative test
11 procedures that include loaded mode dynamometer or two-speed idle testing for
12 vehicles with onboard diagnostic systems that the department and the state board
13 determine exhibit operational problems. The department shall ensure, as
14 appropriate to the test method, the following:

15 (a) Emission control systems required by state and federal law are
16 reducing excess emissions in accordance with the standards adopted pursuant to
17 subdivisions (a) and (c) of Section 44013.

18 (b) Motor vehicles are preconditioned to ensure representative and
19 stabilized operation of the vehicle's emission control system.

20 (c) For other than diesel-powered vehicles, the vehicle's exhaust
21 emissions of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of
22 nitrogen in an idle mode or loaded mode are tested in accordance with procedures
23 prescribed by the department. In determining how loaded mode and evaporative
24 emissions testing shall be conducted, the department shall ensure that the
25 emission reduction targets for the enhanced program are met.

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

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

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

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

44 (h) An analysis of pass and fail rates of vehicles subject to an onboard
45 diagnostic test and a tailpipe test to assess whether any vehicles passing their
46 onboard diagnostic test have, or would have, failed a tailpipe test, and whether

1 any vehicles failing their onboard diagnostic test have or would have passed a
2 tailpipe test.

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

8
9 21. Health and Safety Code section 44015 states, in pertinent part:

10 (a) A licensed smog check station shall not issue a certificate of
11 compliance, except as authorized by this chapter, to any vehicle that meets the
12 following criteria:

13 (1) A vehicle that has been tampered with.

14

15 (b) If a vehicle meets the requirements of Section 44012, a smog check
16 station licensed to issue certificates shall issue a certificate of compliance or a
17 certificate of noncompliance.

18

19 22. Health and Safety Code section 44032 states:

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

26 23. Section 44035 of the Health and Safety Code states:

27 (a) A smog check station's license or a qualified smog check technician's
28 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. The department shall adopt rules and regulations
governing the suspension, revocation, and reinstatement of licenses and
qualifications and the conduct of the hearings.

(b) The department or its representatives, including quality assurance
inspectors, shall be provided access to licensed stations for the purpose of
examining property, station equipment, repair orders, emissions equipment
maintenance records, and any emission inspection items, as defined by the
department.

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1 24. Health and Safety Code section 44072.2 states:

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

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

6

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

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

10

11 25. Health and Safety Code 44072.10 states, in pertinent part:

12 (a) Notwithstanding Sections 44072 and 44072.4, the director, or the
13 director's designee, pending a hearing conducted pursuant to subdivision (e), may
temporarily suspend any smog check station or technician's license issued under
14 this chapter, for a period not to exceed 60 days, if the department determines that
the licensee's conduct would endanger the public health, safety, or welfare before
15 the matter could be heard pursuant to subdivision (e), based upon reasonable
evidence of any of the following:

16 (1) Fraud.

17 (2) Tampering.

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

19 (4) A pattern or regular practice of violating this chapter or any regulation,
standard, or procedure of the department implementing this chapter.

20 ...

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

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

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

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

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

27 ...

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REGULATORY PROVISIONS

26. California Code of Regulations, title 16, section 3340.24, sub-division (c) states:

(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.

27. 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.

(b) A licensed technician shall maintain on file with the bureau a correct mailing address pursuant to section 3303.3 of Article 1 of this Chapter.

28. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

(c) 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. The following conditions shall apply:

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

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

...

29. California Code of Regulations, title 16, section 3340.41, sub-division (c) states:

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

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

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

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

(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of Section 3340.17 of

1 this article. The loaded-mode test shall use Acceleration Simulation Mode (ASM)
2 test equipment, including a chassis dynamometer, certified by the bureau.

3 On and after March 31, 2010, exhaust emissions from a vehicle subject to
4 this inspection shall be measured and compared to the emissions standards shown
5 in the Vehicle Look-up Table (VLT) Row Specific Emissions Standards
6 (Cutpoints) Table, dated March 2010, which is hereby incorporated by reference.
7 If the emissions standards for a specific vehicle are not included in this table then
8 the exhaust emissions shall be compared to the emissions standards set forth in
9 TABLE I or TABLE II, as applicable. A vehicle passes the loaded-mode test if
10 all of its measured emissions are less than or equal to the applicable emission
11 standards specified in the applicable table.

12 (2) A two-speed idle mode test shall be the test method used to inspect
13 1976 - 1999 model-year vehicles, except diesel-powered, registered in all program
14 areas of the state, except in those areas of the state where the enhanced program
15 has been implemented. The two-speed idle mode test shall measure hydrocarbon,
16 carbon monoxide and carbon dioxide emissions at high RPM and again at idle
17 RPM, as contained in the bureau's specifications referenced in subsection (a) of
18 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this
19 inspection shall be measured and compared to the emission standards set forth in
20 this section and as shown in Table III. A vehicle passes the two-speed idle mode
21 test if all of its measured emissions are less than or equal to the applicable
22 emissions standards specified in Table III.

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

27 (b) In addition to subsection (a), all vehicles subject to the smog check
28 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.

(c) The bureau may require any combination of the inspection methods in
sections (a) and (b) under any of the following circumstances:

(1) Vehicles that the department randomly selects pursuant to Health and
Safety Code section 44014.7 as a means of identifying potential operational
problems with vehicle OBD systems.

(2) Vehicles identified by the bureau as being operationally or physically
incompatible with inspection equipment.

(3) Vehicles with OBD systems that have demonstrated operational
problems.

(d) Pursuant to section 39032.5 of the Health and Safety Code, gross
polluter standards are as follows:

(1) A gross polluter means a vehicle with excess hydrocarbon, carbon
monoxide, or oxides of nitrogen emissions pursuant to the gross polluter
emissions standards included in the tables described in subsection (a), as
applicable.

1 (2) Vehicles with emission levels exceeding the emission standards for
2 gross polluters during an initial inspection will be considered gross polluters and
the provisions pertaining to gross polluting vehicles will apply, including, but not
limited to, sections 44014.5, 44015, and 44081 of the Health and Safety Code.

3 (3) A gross polluting vehicle shall not be passed or issued a certificate of
4 compliance until the vehicle's emissions are reduced to or below the applicable
5 emissions standards for the vehicle included in the tables described in subsection
(a), as applicable. However, the provisions described in section 44017 of the
Health and Safety Code may apply.

6 (4) This subsection applies in all program areas statewide to vehicles
7 requiring inspection pursuant to sections 44005 and 44011 of the Health and
Safety Code.

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

9 (a) All Smog Check inspections shall be performed in accordance with
10 requirements and procedures prescribed in the following:

11 (1) Smog Check Inspection Procedures Manual, dated August 2009,
which is hereby incorporated by reference. This manual shall be in effect until
subparagraph (2) is implemented.

12 (2) Smog Check Manual, dated 2013, which is hereby incorporated by
reference. This manual shall become effective on or after January 1, 2013.

13
14 32. California Code of Regulations, title 16, section 3373, states:

15 No automotive repair dealer or individual in charge shall, in filling out an
16 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
17 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,
18 prospective customers, or the public.

19 COST RECOVERY

20 33. Section 125.3 of the Code provides, in pertinent part, that the Board may request
21 the administrative law judge to direct a licentiate found to have committed a violation or
22 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
23 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
24 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
25 may be included in a stipulated settlement.

26 CLEAN PLUGGING

27 34. Between February 2016, and March 2017, the Bureau investigator reviewed
28 current OIS test results transmitted into the Bureau's Vehicle Information Database (VID) by FIC

1 Smog. The test data revealed anomalies consistent with fraudulent smog check activities,
2 specifically with reference to results for inspections purportedly performed on the Smog Check
3 On-Board Diagnostic Inspection System (OIS)² between February 19, 2016, and March 6, 2017.

4 35. The VIN that is physically present on all vehicles is required to be programmed
5 into the vehicle's OBD-OIS on 2005 and newer vehicles, and on many occasions was
6 programmed into the OBD II system electronic control unit in earlier model-years. This
7 electronically programmed Vehicle Identification Number, also known as the "eVIN," is captured
8 by BAR during a Smog Check, and should match the physical Vehicle Identification Number on
9 the vehicle.

10 36. The OBD II communication protocol describes the specified communication
11 "language" used by the OBD II system electronic control unit to communicate to scan tools and
12 other devices such as the OBD-OIS. The communication protocol is programmed into the OBD
13 II system electronic control unit during manufacture and does not change.

14 37. Parameter Identifications (PIDs) are data points reported by the OBD II system
15 electronic control unit (ECU) to the scan tool or On-Board Diagnostic Inspection System.
16 Examples of PIDs are engine speed (rpm), vehicle speed, engine temperature, and other input and
17 output values utilized by the OBD II system electronic control unit. The PIDs count is the
18 number of data points reported by the OBD II system ECU, and is programmed during
19 manufacture.

20
21
22 ² The On-Board Diagnostic Inspection System (OIS) is a Smog Check testing system to
23 certify 2000 model year vehicles and newer. The OIS consists of a BAR-certified Data
24 Acquisition Device (DAD) and other equipment including a computer, bar code scanner, and
25 printer. The OIS uses the California BAR-OIS software to communicate with the BAR's central
26 database through an Internet connection. The bar code scanner is used to input technician,
27 Vehicle Identification Number (VIN), and DMV renewal information. The printer provides a
28 Vehicle Inspection Report containing inspection results for motorists and a Smog Check
Certificate of Compliance number for passing vehicles. The Inspector is required to connect the
Data Acquisition Device to the vehicle to be certified. The Data Acquisition Device is an On
Board Diagnostic scan tool that, when requested by the California BAR-OIS software, retrieves
On Board Diagnostic data from the vehicle. The Data Acquisition Device connects to the
vehicle's on-board computer through the vehicle's diagnostic link connector (DLC). The Data
Acquisition Device is the only BAR-certified component of the OIS.

1 38. The Bureau investigator documented eight (8) vehicles certified by FIC Smog
2 between February 19, 2016, and March 6, 2017, using Respondent Farries' Smog Check
3 Technician license number and OIS access code, with one or more discrepancies in the eVIN,
4 vehicle communication protocols, and or PIDs. All eight vehicles that are identified below had
5 information stored in the VID that did not apply to those vehicles. Respondent Farries issued the
6 eight fraudulent Certificates of Compliance to those vehicles as follows:

7 (a) **Clean Plug #1**

8 OIS Test Detail data indicates that on February 19, 2016, a 2002 Chrysler Sebring passed
9 an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
10 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
11 that an incorrect eVIN for this vehicle was transmitted, the transmitted communication protocol
12 was JPWM, and the transmitted PID count was 20.

13 Comparative OIS test data of other 2002 Chrysler Sebrings reveals that no eVIN is
14 transmitted, the expected communication protocol is I914 and the expected PID count is 20.
15 Additionally, the OIS Test Data shows that a 2000 Ford Expedition was the vehicle actually used
16 to generate the fraudulent Smog Certificate of Compliance for the 2002 Chrysler Sebring. The
17 2004 Ford Expedition was certified by Respondent Farries that same day, and the OIS Test Data
18 for the 2000 Ford Expedition matches what was inputted by Respondent Farries for the 2002
19 Chrysler Sebring. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition
20 Device (DAD) *was not* connected to the 2002 Chrysler Sebring being certified, causing the
21 issuance of illegal smog Certificate of Compliance.

22 (b) **Clean Plug #2**

23 OIS Test Detail data indicates that on March 8, 2016, a 2004 Porsche 911 passed an OIS
24 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
25 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
26 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
27 and the transmitted PID count was 20/1.

1 Comparative OIS test data of other 2004 Porsche 911s reveals the correct eVIN is
2 transmitted, the expected communication protocol is I914 and the expected PID count is 23. The
3 discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not*
4 connected to the 2004 Porsche 911 being certified, causing the issuance of illegal smog
5 Certificate of Compliance.

6 (c) **Clean Plug #3**

7 OIS Test Detail data indicates that on June 7, 2016, a 2007 Ford Mustang passed an OIS
8 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
9 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
10 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
11 and the transmitted PID count was 16.

12 Comparative OIS test data of other 2007 Ford Mustangs reveals the correct eVIN is
13 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
14 42 or 44. Additionally, OIS Test Data shows that the same 2007 Ford Mustang was inspected on
15 August 28, 2015, and failed the inspection. During that inspection, the correct eVIN was
16 transmitted for the vehicle, along with a communication protocol of ICAN11bt5, and a PID count
17 of 44. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device
18 (DAD) *was not* connected to the 2007 Ford Mustang being certified, causing the issuance of
19 illegal smog Certificate of Compliance.

20 (d) **Clean Plug #4**

21 OIS Test Detail data indicates that on June 18, 2016, a 2010 Mercedes-Benz E550 passed
22 an OIS inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
23 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
24 that an incorrect eVIN for this vehicle was transmitted, the transmitted communication protocol
25 was ICAN11bt5, and the transmitted PID count was 46/12.

26 Comparative OIS test data of other 2010 Mercedes-Benz E550s reveals the correct eVIN is
27 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
28 47/12. OIS Test Data reveals that the same 2010 Mercedes-Benz E550 was inspected on March

1 21, 2016. During that inspection, the correct eVIN was transmitted, along with the correct
2 communication protocol and the expected PID count. OIS Test Data also reveals that a 2010
3 Mercedes-Benz GL 450 was the vehicle used to generate the fraudulent Smog Certificate of
4 Compliance for the 2010 Mercedes-Benz E550. The eVIN for the 2010 Mercedes-Benz GL 450
5 was the same eVIN used to fraudulently certify the 2010 Mercedes-Benz E 550 on June 18, 2016.

6 The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD)
7 *was not* connected to the 2010 Mercedes-Benz E550 being certified, causing the issuance of
8 illegal smog Certificate of Compliance.

9 (e) **Clean Plug #5**

10 OIS Test Detail data indicates that on October 8, 2016, a 2002 BMW M3 passed an OIS
11 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
12 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
13 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
14 and the transmitted PID count was 17/1.

15 Comparative OIS test data of other 2002 BMW M3s reveals the correct eVIN is
16 transmitted, the expected communication protocol is I914 and the expected PID count is 23, 23/1,
17 24, or 24/1. Additionally, OIS Test Data reveals that the same 2002 BMW M3 was inspected on
18 November 1, 2014. During that inspection, the correct eVIN was transmitted, the communication
19 protocol was I914, and the PID count was 23. The discrepancies in the OIS Test Data prove that
20 the OIS Data Acquisition Device (DAD) *was not* connected to the 2002 BMW M3 being
21 certified, causing the issuance of illegal smog Certificate of Compliance.

22 (f) **Clean Plug #6**

23 OIS Test Detail data indicates that on December 7, 2016, a 2004 Mazda RX8 passed an OIS
24 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
25 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
26 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
27 and the transmitted PID count was 18.

1 Comparative OIS test data of other 2004 Mazda RX8s reveals the correct eVIN is
2 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
3 35/8, 37/13, or 37/8. Additionally, OIS Test Data reveals that the same 2004 Mazda RX8 was
4 inspected on September 19, 2016, and failed the inspection. During that inspection, the correct
5 eVIN was transmitted, the communication protocol was ICAN11bt5, and the PID count was 37/8.
6 The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was*
7 *not* connected to the 2004 Mazda RX8 being certified, causing the issuance of illegal smog
8 Certificate of Compliance.

9 (g) **Clean Plug #7**

10 OIS Test Detail data indicates that on March 4, 2017, a 2002 Ford Explorer passed an OIS
11 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
12 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
13 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
14 and the transmitted PID count was 19.

15 Comparative OIS test data of other 2002 Ford Explorers reveals the correct eVIN is
16 transmitted, the expected communication protocol is JPWM, and the expected PID count is 22.
17 Additionally, OIS Test Data reveals that the same 2002 Ford Explorer was inspected on
18 December 17, 2016, and failed the inspection. During that inspection, the correct eVIN was
19 transmitted, the communication protocol was JPWM, and the PID count was 22. The
20 discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device (DAD) *was not*
21 connected to the 2002 Ford Explorer being certified, causing the issuance of illegal smog
22 Certificate of Compliance.

23 (h) **Clean Plug #8**

24 OIS Test Detail data indicates that on March 6, 2017, a 2009 BMW M3 passed an OIS
25 inspection at FIC Smog. FIC Smog issued a Certificate of Compliance using smog check
26 inspector license number EO 152881, belonging to Respondent Farries. The Test Detail shows
27 that no eVIN for this vehicle was transmitted, the transmitted communication protocol was I914,
28 and the transmitted PID count was 20.

1 Comparative OIS test data of other 2009 BMW M3s reveals the correct eVIN is
2 transmitted, the expected communication protocol is ICAN11bt5, and the expected PID count is
3 16, 44, 44/16, 46, 46/16, 48, or 48/16. Additionally, OIS Test Data reveals that the same 2009
4 BMW M3 was inspected on March 1, 2017, and failed the inspection. During that inspection, the
5 correct eVIN was transmitted, the communication protocol was ICAN11bt5, and the PID count
6 was 48. The discrepancies in the OIS Test Data prove that the OIS Data Acquisition Device
7 (DAD) *was not* connected to the 2009 BMW M3 being certified, causing the issuance of illegal
8 smog Certificate of Compliance.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Untrue or Misleading Statements)**

11 39. Respondent White's Automotive Repair Dealer Registration for FIC Smog, ARD
12 225452, is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(1), in
13 that White made or authorized statements that he knew or in the exercise of reasonable care
14 should have known were untrue or misleading, as follows: White certified that the vehicles
15 described in paragraph 38, above, had passed inspection and were in compliance with applicable
16 laws and regulations. In fact, White conducted inspections on the vehicles using clean-plugging
17 methods in order to issue smog certificates of compliance for the vehicles, and did not actually
18 test or inspect the vehicles as required by Health and Safety Code section 44012.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Fraud)**

21 40. Respondent White's Automotive Repair Dealer Registration for FIC Smog, ARD
22 225452, is subject to disciplinary action pursuant to Code section 9884.7, subdivision (a)(4), in
23 that White committed acts that constitute fraud by issuing electronic smog certificates of
24 compliance for the vehicles described in paragraph 38, above, without performing bona fide
25 inspections of the emission control devices and systems on the vehicles, thereby depriving the
26 People of the State of California of the protection afforded by the Motor Vehicle Inspection
27 Program.

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1 b. **Section 3340.35, subdivision (c):** White issued electronic smog certificates of
2 compliance for the vehicles described in paragraph 38, above, even though the vehicles had not
3 been inspected in accordance with section 3340.42.

4 c. **Section 3340.42:** White failed to ensure that the required smog tests were conducted
5 on the vehicles described in paragraph 38, above, in accordance with the Bureau's specifications.

6 d. **Section 3373:** White created a false and misleading record by issuing a document that
7 was false and misleading.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 43. Respondent White's Smog Check Test-Only Station license for FIC Smog, TC
11 225452, is subject to disciplinary action pursuant to Health and Safety Code section 44072.2,
12 subdivision (d), in that White committed dishonest, fraudulent, or deceitful acts whereby another
13 is injured by issuing electronic smog certificates of compliance for the vehicles described in
14 paragraph 38, above, without performing bona fide inspections of the emission control devices
15 and systems on the vehicles, thereby depriving the People of the State of California of the
16 protection afforded by the Motor Vehicle Inspection Program.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 44. Respondent Farries' Smog Check Inspector license no. EO 152881 is subject to
20 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a), in that
21 Farries failed to comply with the following provisions of the Health and Safety Code:

22 a. **Health and Safety Code section 44032:** Farries failed to ensure that all emission
23 control devices and systems required by law for the vehicles described in paragraph 38, above,
24 were installed and functioning correctly in accordance with test procedures.

25 b. **Health and Safety Code section 44059:** Farries willfully made false entries for
26 electronic certificates of compliance for the vehicles described in paragraph 38, above, by
27 certifying that those vehicles have been inspected is required when, in fact, they had not.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Failure to Use Proper Test Methods Pursuant to the Motor Vehicle Inspection Program)**

3 45. Respondent Farries's Smog Check Inspector license no. EO 152881 is subject to
4 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (c), in that
5 Farries failed to comply with the following provisions of California Code of Regulations, Title
6 16:

7 a. **Section 3430, subdivision (a):** Farries failed to inspect and test the vehicles
8 described in paragraph 38, above, in accordance with Health and Safety Code sections 44012 and
9 44035, and CCR section 3340.42.

10 b. **Section 3340.41, subdivision (c):** Farries intentionally permitted false information
11 about the vehicles described in paragraph 38, above, to be entered into the department's
12 Emissions Inspection System.

13 c. **Section 3340.42:** Farries failed to conduct the required smog tests on the vehicles
14 described in paragraph 38, above, in accordance with the Bureau's specifications.

15 **EIGHTH CAUSE FOR DISCIPLINE**

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

17 46. Respondent Farries's Smog Check Inspector license no. EO 152881 is subject to
18 disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that
19 Farries committed dishonest, fraudulent, or deceitful acts whereby another is injured by causing
20 an electronic certificate of compliance to be issued for the vehicles described in paragraph 38,
21 above, without performing bona fide inspections of the emission control devices and systems on
22 the vehicles, thereby depriving the People of the State of California of the protection afforded by
23 the Motor Vehicle Inspection Program.

24 **DISCIPLINARY CONSIDERATIONS**

25 47. On February 20, 2018, in the San Diego Superior Court, case number SCN
26 380551, Respondent Farries pled guilty to a violation of Vehicle Code section 4463(a)(2),
27 admitting that he knowingly and unlawfully and with the intent to defraud passed a certificate
28 knowing it to be altered. As part of the plea agreement, the court ordered that Respondent Farries

1 conduct no smog inspections for three years. At the sentencing hearing on March 21, 2018, the
2 court reduced the conviction to a misdemeanor. Respondent Farries was required to serve 17
3 days in county jail, including good behavior credits, with an additional 180 days stayed pending
4 successful completion of probation. Respondent Farries probation includes a Fourth Amendment
5 waiver, to expire on March 20, 2021, various fines and fees, and an order not to engage "in any
6 employment involving smog certifications."

7 48. A citation was issued to Respondent Farries' Advanced Emission Specialist
8 Technician License on October 19, 2010. Respondent Farries was required to complete a 68-hour
9 training course.

10 49. A citation was issued to Respondent Farries' Advanced Emission Specialist
11 Technician License on August 22, 2007. Respondent Farries was required to complete a 16-hour
12 training course.

13 50. A citation was issued to Respondent Farries' Advanced Emission Specialist
14 Technician License on May 23, 2007. Respondent Farries was required to complete an 8-hour
15 training course.

16 **OTHER MATTERS**

17 51. Under Code section 9884.7, subdivision (c), the Director may invalidate
18 temporarily or permanently or refuse to validate, the registrations for all places of business
19 operated in this state by an automotive repair dealer upon a finding that the automotive repair
20 dealer has engaged in a course of repeated and willful violations of the laws and regulations
21 pertaining to an automotive repair dealer.

22 52. Under Health and Safety Code section 44072.8, if Smog Check Test-Only Station
23 License Number TC 225452, issued to Bryan Anthony White, doing business as FIC Smog, is
24 revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 in
25 the name of said licensee may be likewise revoked or suspended by the director.

26 53. Under Health and Safety Code section 44072.8, if Smog Check Inspector License
27 Number EO 152881, issued to Joe Hoang Farries, is revoked or suspended, any additional license
28

1 issued under Chapter 5 of Part 5 of Division 26 in the name of said licensee may be likewise
2 revoked or suspended by the director.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Director of Consumer Affairs issue a decision:

6 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
7 225452, issued to Bryan A. White dba FIC Smog;

8 2. Revoking or suspending Smog Check-Test Only Station License Number TC 225452,
9 issued to Bryan A. White dba FIC Smog;

10 3. Revoking or suspending Smog Check Inspector License Number EO 146945, issued
11 to Bryan Anthony White;

12 4. Revoking or suspending Smog Check Repair Technician Number EI 146945, issued
13 to Bryan Anthony White;

14 5. Revoking or suspending any additional license under Chapter 5 of Part 5 of Division
15 26 in the name of Bryan Anthony White;


16 6. Revoking or suspending Smog Check Inspector License Number EO 152881, issued
17 to Joe Hoang Farries;

18 7. Revoking or suspending any additional license under Chapter 5 of Part 5 of Division
19 26 in the name of Joe Hoang Farries;

20 8. Ordering Bryan Anthony White and Joe Hoang Farries to pay the Bureau of
21 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
22 pursuant to Business and Professions Code section 125.3; and,

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

24
25 DATED: June 29, 2018


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