

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 E-mail: kim.settles@doj.ca.gov
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 79/16-147

13 **MICHAEL JAMES ESPINOZA, OWNER**
14 **DOING BUSINESS AS A DISCOUNT**
SMOG CHECK CENTER #1
15 **1051 Airway Blvd.**
Livermore, CA 94551

A C C U S A T I O N

16 **Automotive Repair Dealer Registration No.**
ARD 243376

17 **Smog Check Station License No. TC 243376**

18 **MICHAEL JAMES ESPINOZA**
19 **1051 Airway Blvd.**
Livermore, CA 94551

20 **Smog Check Inspector License No. EO**
21 **141208**

22 **Smog Check Repair Technician License No.**
EI141208

23 Respondent.
24

25 Complainant alleges:

26 **PARTIES**

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

2. On or about February 2, 2006, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 243376 to Michael James Espinoza, owner, dba A Discount Smog Check Center #1; ("Respondent"). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on January 31, 2017, unless renewed.

3. On or about March 7, 2006, the Bureau of Automotive Repair issued Smog Check Test Only Station License Number TC 243376 to Michael James Espinoza, owner, dba A Discount Smog Check Center #1; (“Respondent”). The Smog Check Test Only Station License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on January 31, 2017, unless renewed.

4. In 2003, the Bureau of Automotive Repair issued Advanced Emission Specialist Technician License Number EA 141208 to Michael James Espinoza (“Respondent”) The license expired on September 30, 2013, and was cancelled on October 9, 2013. The license was renewed pursuant to Respondent’s election as Smog Check Inspector (EO) License Number EO 141208 and Smog Check Repair Technician (EI) License Number EI 141208, effective October 9, 2013. The Smog Check Inspector (EO) License was in full force and effect at all times relevant to the charges brought in this Accusation, and will expire on September 30, 2017, unless renewed. The Smog Check Repair Technician (EI) License expired on September 20, 2015.

JURISDICTION

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

6. Business and Professions Code (“Code”) section 118, subdivision (b), provides that the expiration of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Code 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

1 registration temporarily or permanently.

2 8. Code section 9889.1 provides, in pertinent part, that the Director may suspend or
3 revoke any license issued under Articles 5 and 6 (commencing with section 9887.1) of the
4 Automotive Repair Act.

5 9. Code section 9889.7 provides, in pertinent part, that the expiration or suspension of a
6 license by operation of law by order or decision of the Director or a court of law, or the voluntary
7 surrender of a license shall not deprive the director of jurisdiction to proceed with any disciplinary
8 proceedings.

9 10. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
10 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
11 the Motor Vehicle Inspection Program.

12 11. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
13 expiration or suspension of a license by operation of law, or by order or decision of the Director of
14 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
15 Director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings
16 against the licensee, or to render a decision suspending or revoking the license.

17 **STATUTORY/REGULATORY PROVISIONS**

18 12. Section 9884.7 of the Code states:

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

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

27

28 (4) Any other conduct which constitutes fraud.

1

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

4 13. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

11

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

13 14. Section 44032 of the Health and Safety Code states:

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

19 15. Section 44012 of the Health and Safety Code states, in pertinent part:

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

24

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

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

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

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

6 . . .

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

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

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

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

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

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

20 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
21 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
22 3340.42 of this article."

23 **COST RECOVERY**

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

1 included in a stipulated settlement.

2 **FACTUAL ALLEGATIONS**

3 19. On November 18, 2015, Bureau representative Matthew Rodriguez reviewed the OIS
4 ("On Board Diagnostic Inspection System") smog check data for vehicles inspected and certified
5 by A Discount Smog Check Center #1, for the period between December 4, 2013 and November
6 30, 2015. During Rodriguez' investigation, he accessed the Vehicle Information Database
7 ("VID"), and performed a focused review of BAR-OIS test data for A Discount Smog Check
8 Center #1. BAR-OIS test data is the OBD ("On Board Diagnostics System") information
9 transmitted during a smog inspection from the computer of the vehicle being inspected to the
10 BAR-OIS. Beginning March 9, 2015, California's Smog Check Program was updated and now
11 requires smog inspectors and stations to use the BAR-OIS computer system during smog
12 inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and most 1998 and
13 new diesel vehicles. The BAR-OIS consists of a BAR-certified Data Acquisition Device ("DAD"),
14 computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic ("OBD")
15 scan tool. The DAD is an interface box that connects the computer containing the BAR-OIS
16 software to the diagnostic link connector ("DLC") of the vehicle being inspected. When requested
17 by the BAR-OIS software, the DAD retrieves data from the vehicle's on-board computer system
18 ("OBD II").

19 20. The information obtained by the BAR-OIS software during a smog inspection is
20 organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS
21 Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks
22 titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details,
23 OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of Rodriguez'
24 investigation of Respondent A Discount Smog Check Center #1, he focused on information in the
25 "Vehicle" and "OBDII Details" blocks because they contain a unique combination of information
26 for the vehicle being inspected and "like vehicles" inspected. Like vehicles are vehicles of the same
27 manufacturer, model, and model year that were inspected on the BAR-OIS. The unique
28 combination of information analyzed by Rodriguez includes the eVIN ("Electronic Vehicle

Identification Number”), PID (“Parameter Identification”) count, and communication protocol. Rodriguez compared the eVIN, communication protocol, and PID count for a vehicle that was certified to like vehicles.

21. Rodriguez identified a 2001 Mazda MVP Wagon certified by Respondents, A Discount Smog Check Center #1 and Mark Thomas Espinoza, on August 12, 2015, using the OBDII of a 2011 Ford Edge ESL. The OIS Data transmitted during Mark Thomas Espinoza’s inspection showed a discrepancy in the communication protocol and PID, the smog check inspection test history for the Mazda MPV Wagon, and the OIS Inspection data for the 2011 Ford Edge SEL.

22. Rodriguez’ review of the BAR-OIS data for the Mazda MVP Wagon certified by Respondents, A Discount Smog Check Center #1 and Mark Thomas Espinoza, as set forth in paragraph 32, above, constitutes a fraudulent smog inspection that resulted in the issuance of a fraudulent certificate of compliance. Respondent, Mark Thomas Espinoza therefore clean plugged the Mazda MVP Wagon, resulting in Respondent, A Discount Smog Check Center #1 issuing a fraudulent Certificate of Compliance on August 12, 2015.

23. Rodriguez identified a 1999 Ford F350 Diesel certified by Respondents, A Discount Smog Check Center #1 and Michael James Espinoza on May 18, 2015, using an EIS (“Emission Inspection System”) when and inspection using an OIS was required.

FIRST CAUSE FOR DISCIPLINE

(Violation of Motor Vehicle Inspection Program)

24. Respondent, Michael James Espinoza has subjected his Smog Check Inspector and Smog Check Repair Technician Licenses to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (a) and (e), in that he failed to perform a smog inspection in accordance with procedures prescribed by the department, as set forth in paragraph 23, above. The circumstances are as follows:

a. **Health & Safety Code, section 44012:** Respondent, Michael James Espinoza failed to follow test procedures prescribed by the department when he issued a certificate of certification

1 to a vehicle, using the Emission Inspection System ("EIS") when the vehicle was required to be
2 certified using the On Board Diagnostic Inspection System.

3 **b. Health & Safety Code, section 44032:** Respondent, Michael James Espinoza failed
4 to ensure that the emission control tests were performed in accordance with the procedures
5 prescribed by the department.

6 **c. Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent, Michael
7 James Espinoza failed to inspect and test a vehicle in accordance with Health & Safety Code
8 sections 44012.

9 **d. Cal. Code Regs., tit. 16, section 3340.42, subdivision (a)(3):** Respondent, Michael
10 James Espinoza failed to perform an OBD-focused test on gasoline powered vehicles 2000 model
11 year and newer and diesel-powered vehicles 1998 model year and newer.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Violation of Motor Vehicle Inspection Program)**

14 25. Respondent, Michael James Espinoza has subjected his Smog Check Inspector and
15 Smog Check Repair Technician Licenses to disciplinary action pursuant to Health and Safety Code
16 section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud, or deceit,
17 whereby another was injured, when he failed to perform an OBD-focused test as required, and
18 instead performed a smog test using the EIS, as set forth in paragraphs 23, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Making or Authorizing Untrue or Misleading Statements)**

21 26. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog
22 Check, has subjected its Automotive Repair Dealer Registration and Smog Check Center #1
23 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,
24 subdivision (a)(1), in that it issued two fraudulent certificates of compliance and failed to comply
25 with the Automotive Repair Act as set forth in paragraphs 21-23, above.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 27. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog
4 Check Center #1, has subjected its Automotive Repair Dealer Registration and Smog Check
5 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,
6 subdivision (a)(4), in that it issued two fraudulent certificates of compliance as set forth in
7 paragraphs 21-23, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Failure to Comply with the Automotive Repair Act)**

10 28. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog
11 Check Center #1, has subjected its Automotive Repair Dealer Registration and Smog Check
12 Station License to disciplinary action pursuant to Business and Professions Code section 9884.7,
13 subdivision (a)(6) and Health and Safety Code section 44072.2, subdivisions (a) and (c), in that it
14 failed to comply with the Automotive Repair Act and sections of the Code and applicable
15 regulations as set forth in paragraphs 21-23, above. The violations are as follows:

16 a. **Health & Safety Code, section 44012:** Respondent, Michael James Espinoza,
17 owner, doing business as A Discount Smog Check Center #1, failed to follow test procedures
18 prescribed by the department when it issued a certificate of compliance to a vehicle, using the
19 Emission Inspection System ("EIS") when the vehicle was required to be certified using the On
20 Board Diagnostic Inspection System.

21 b. **Health & Safety Code, section 44012, subdivision (f):** Respondent, Michael James
22 Espinoza, owner, doing business as A Discount Smog Check Center #1, failed to follow test
23 procedures in accordance with the OIS specifications when it failed to properly conduct the
24 functional portion of the smog inspection by failing to connect two vehicles to the BAR-OIS when
25 they were being certified.

26 c. **Health & Safety Code, section 44032:** Respondent, Michael James Espinoza,
27 owner, doing business as A Discount Smog Check Center #1, failed to ensure that the emission
28 control tests were performed in accordance with the procedures prescribed by the department.

1 **d. Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent, Michael
2 James Espinoza, owner, doing business as A Discount Smog Check, failed to inspect and test a
3 vehicle in accordance with Health & Safety Code sections 44012.

4 **e. Cal. Code Regs., tit. 16, section 3340.42, subdivision (a)(3):** Respondent, Michael
5 James Espinoza, owner, doing business as A Discount Smog Check Center #1, failed to perform
6 an OBD-focused test on gasoline powered vehicles 2000 model year and newer and diescl-
7 powered vehicles 1998 model year and newer.

8 **f. Cal. Code Regs., tit. 16, section 3340.35, subdivision (c):** Respondent, Michael
9 James Espinoza, owner, doing business as A Discount Smog Check Center #1, falsely or
10 fraudulently issued certificates of compliance for two vehicles that had not been inspected in
11 accordance with the procedures specified in Cal. Code Regs., tit. 16, section 3340.42.

12 **SIXTH CAUSE FOR DISCIPLINE**

13 **(Dishonesty, Fraud, Deceit)**

14 29. Respondent, Michael James Espinoza, owner, doing business as A Discount Smog
15 Check Center #1, has subjected its Automotive Repair Dealer Registration and Smog Check
16 Station License to disciplinary action pursuant to Health and Safety Code section 44072.2,
17 subdivision (d), in that it committed acts involving dishonesty, fraud or deceit, whereby another
18 was injured, by issuing two fraudulent certificates of compliance as set forth in paragraphs 21-23,
19 above.

20 **PRAYER**

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

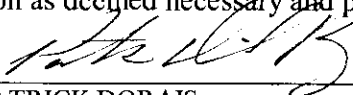
23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 243376, issued to Michael James Espinoza, owner, dba A Discount Smog Check Center #1;;

25 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
26 243376, issued to Michael James Espinoza, owner, dba A Discount Smog Check Center #1;;

27 3. Revoking or suspending Smog Check Inspector License Number EO 141208, issued
28 to Michael James Espinoza;

1 4. Taking such other and further action as deemed necessary and proper.

2 DATED: 7-12-16

 FOR

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

3
4
5
6
7 SF2016900209
 90670767.doc