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

12
13 In the Matter of the Accusation Against:

Case No. 79/21-11452

14 **MICHAEL JAMES ESPINOZA**
15 **dba A DISCOUNT SMOG CHECK CENTER #1**
1051 Airway Blvd.
Livermore, CA 94551

ACCUSATION

16 Automotive Repair Dealer Registration No. ARD 243376
17 Smog Check Test Only Station License No. TC 243376
18 Smog Check Inspector License No. EO 141208

19 Respondent

20 **PARTIES**

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

23 2. On or about February 2, 2006, the Bureau issued Automotive Repair Dealer
24 Registration Number ARD 243376 to Michael James Espinoza, Owner, dba A Discount Smog
25 Check Center #1 (Respondent). The Registration was in effect at all times pertinent to this case
26 and will expire on January 31, 2023, unless renewed.
27
28

1 3. On or about March 7, 2006, the Bureau issued Smog Check Test Only Station
2 License Number TC 243376 to Respondent. The License was in effect at all times pertinent to
3 this case and will expire on January 31, 2023, unless renewed.

4 4. In 2013, the Bureau issued Smog Check Inspector License Number EO 141208 to
5 Respondent Michael James Espinoza. The License was in full force and effect at all times
6 pertinent to this case and will expire on September 30, 2023, unless renewed.

7 **JURISDICTION AND STATUTORY PROVISIONS**

8 5. This Accusation is brought before the Director of the Department of Consumer
9 Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.
10 All section references are to the Business and Professions Code ("Code") unless otherwise
11 indicated.

12 6. Section **118(b)** of the Code states:

13 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
14 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
15 order of a court of law, or its surrender without the written consent of the board, shall not, during
16 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
17 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
18 provided by law or to enter an order suspending or revoking the license or otherwise taking
19 disciplinary action against the licensee on any such ground.

20 7. Section **9884.13** of the Code states:

21 The expiration of a valid registration shall not deprive the director or chief of jurisdiction to
22 proceed with any investigation or disciplinary proceeding against an automotive repair dealer or
23 to render a decision invalidating a registration temporarily or permanently.

24 **STATUTORY AND REGULATORY PROVISIONS**

25 8. Section **9884.7** of the Business and Professions Code ("Code") states, in pertinent
26 part:

27 (a) The director, if the automotive repair dealer cannot show there was a bona fide error,
28 may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer

1 for any of the following acts or omissions related to the conduct of the business of the automotive
2 repair dealer, which are done by the automotive repair dealer or any automotive technician,
3 employee, partner, officer, or member of the automotive repair dealer:

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

7 . . .

8 (3) Failing or refusing to give to a customer a copy of any document requiring the
9 customer's signature as soon as the customer signs the document.

10 (4) Any other conduct that constitutes fraud.

11 . . .

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

14 . . .

15 (c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
16 probation the registration for all places of business operated in this state by an automotive repair
17 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
18 and willful violations of this chapter, or regulations adopted pursuant to it.

19 . . .

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

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

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

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

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

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

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

4 (a) Violates any section of this chapter and the regulations adopted pursuant to it, which
5 related to the licensed activities.

6 . . .

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

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

9 . . .

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

12 15. 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
14 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
15 the Director of jurisdiction to proceed with disciplinary action.

16 16. Section **44072.8** of the Health and Safety Code states:

17 When a license has been revoked or suspended following a hearing under this article, any
18 additional license issued under this chapter in the name of the licensee may be likewise revoked
19 or suspended by the director.

20 17. California Code of Regulations, Title 16, section **3340.24(c)**, states:

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

24 18. California Code of Regulations, Title 16, section **3340.30**, states, in pertinent part:

25 A licensed smog check inspector and/or repair technician shall comply with the following
26 requirements at all times while licensed:

27 (a) A licensed technician shall inspect, test and repair vehicles, as applicable, in accordance
28 with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code,

1 and section 3340.42 of this article.

2 . . .

3 19. California Code of Regulations, Title 16, section **3340.35(c)**, states, in pertinent part:

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

8 . . .

9 20. California Code of Regulations, Title 16, section **3340.41(c)**, states:

10 No person shall enter into the emissions inspection system any vehicle identification
11 information or emission control system identification data for any vehicle other than the one
12 being tested. Nor shall any person knowingly enter into the emissions inspection system any false
13 information about the vehicle being tested.

14 21. California Code of Regulations, Title 16, section **3353(a)**, states:

15 (a) Estimate for Parts and Labor. Every automotive repair dealer shall give to each
16 customer an estimate containing the estimated price for parts and labor for a specific job prior to
17 obtaining authorization. Each part listed in the estimate shall be new unless specifically identified
18 as a used, rebuilt, or reconditioned part.

19 22. California Code of Regulations, Title 16, section **3373**, states:

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

25 **COST RECOVERY**

26 23. Code section **125.3** provides, in pertinent part, that a Board may request the
27 administrative law judge to direct a licensee found to have committed a violation or violations of
28 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case.

2 **UNDERCOVER OPERATION**

3 24. On or about September 2, 2021, a Bureau undercover operator (“operator”) drove an
4 undercover vehicle, a 2009 Chevrolet, to Respondent’s smog check station and requested a smog
5 inspection. As part of the Bureau's documentation of the vehicle, the vehicle's exhaust gas
6 recirculation system (EGR) components had been removed, rendering the vehicle incapable of
7 passing the visual portion of the smog inspection. A technician at the station conducted the smog
8 inspection on the vehicle, and issued electronic Certificate of Compliance Number SG456373C,
9 certifying that the technician had tested and inspected the vehicle and that it was in compliance
10 with applicable laws and regulations. In fact, the vehicle could not have passed the visual portion
11 of the smog inspection because the vehicle’s EGR components were missing. The station also
12 failed to provide the operator with a copy of the signed estimate.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Untrue or Misleading Statements -- Registration)**

15 25. Respondent's registration is subject to discipline under Code section 9884.7(a)(1), in
16 that Respondent made or authorized statements which Respondent knew or in the exercise of
17 reasonable care should have known to be untrue or misleading by issuing electronic Certificate of
18 Compliance Number SG456373C for the vehicle, certifying that the vehicle was in compliance
19 with applicable laws and regulations, when, in fact, the vehicle could not have passed the visual
20 portion of the smog inspection because the vehicle’s EGR components were missing, as set forth
21 above in paragraph 24.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Fraud -- Registration)**

24 26. Respondent's registration is subject to discipline under Code section 9884.7(a)(4), in
25 that Respondent committed acts which constitute fraud by issuing electronic Certificate of
26 Compliance Number SG456373C for the vehicle without performing a bona fide inspection of the
27 emission control devices and systems on the vehicle, thereby depriving the People of the State of
28

1 California of the protection afforded by the Motor Vehicle Inspection Program, as set forth above
2 in paragraph 24.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Comply With Chapter - Registration)**

5 27. Respondent's registration is subject to discipline under Code section 9884.7(a)(6), in
6 that Respondent failed to comply with laws and regulations pertaining to the performance of
7 smog checks, as set forth above in paragraph 24.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Failure to Provide Documents to Customer - Registration)**

10 28. Respondent's registration is subject to discipline under Code sections 9884.7(a)(3)
11 and 9884.9(a), in that Respondent failed to provide the customer with a signed estimate at the
12 time of its signing, as set forth above in paragraph 24.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Violation of the Motor Vehicle Inspection Program – Station License)**

15 29. Respondent's station license is subject to discipline under Health and Safety Code
16 section 44072.2, subdivisions (a) and (c), in that Respondent violated sections of that Code and
17 applicable regulations, as set forth above in paragraph 24, as follows:

18 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
19 performed on the vehicle in accordance with procedures prescribed by the department.

20 b. **Section 44015:** Respondent issued an electronic certificate of compliance for the
21 vehicle without ensuring that the vehicle was properly tested and inspected to determine if it was
22 in compliance with Health and Safety Code section 44012.

23 c. **Section 44059:** Respondent willfully made false entries for the electronic certificate
24 of compliance by certifying that the vehicle had been inspected as required when, in fact, it had
25 not.

26 d. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued an
27 electronic certificate of compliance for the vehicle without a performing bona fide inspection of
28 the emission control devices and systems on the vehicle as required by Health and Safety Code

1 section 44012.

2 e. **Section 3340.35, subdivision (c):** Respondent issued an electronic certificate of
3 compliance even though the vehicle had not been inspected in accordance with section 3340.42.

4 f. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS.

5 g. **Section 3340.42:** Respondent failed to conduct the required smog tests and
6 inspections on the vehicle in accordance with the Bureau's specifications.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Dishonesty, Fraud or Deceit – Station License)**

9 30. Respondent's station license is subject to discipline under Health and Safety Code
10 section 44072.2, subdivision (d), in that Respondent committed acts involving dishonesty, fraud
11 or deceit, whereby another was injured by issuing an electronic certificate of compliance for the
12 vehicle without performing bona fide inspections of the emission control devices and system on
13 the vehicle, thereby depriving the People of the State of California of the protection afforded by
14 the Motor Vehicle Inspection Program, as set forth above in paragraphs 24-26.

15 **DISCIPLINE CONSIDERATIONS**

16 31. To determine the degree of discipline, if any, to be imposed on Respondent
17 Complainant alleges that on or about September 6, 2016, in a prior action, an accusation was filed
18 against Respondent. On December 28, 2016, the Department of Consumer Affairs adopted a
19 decision in the matter of Accusation 79/16-147 which revoked Respondent's Smog Station's
20 Smog Check Station license, Smog Check Inspector License and Automotive Repair Dealer
21 registration. However, the revocations were stayed and the Respondent was placed on five years'
22 probation.

23 32. To determine the degree of discipline, if any, to be imposed on Respondent
24 Complainant alleges that on or about February 15, 2017, a program representative conducted a
25 Probation Conference with Respondent. During this conference, Respondent was warned that
26 failure to follow the Laws and Regulations contained within the Automotive Repair Act, and
27 other applicable laws and regulations may result in disciplinary action. Respondent was further
28

1 warned that the Bureau might run an undercover operation at his facility to confirm compliance
2 with the law.

3 **OTHER MATTERS**

4 33. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
5 probation the registrations for all places of business operated in this state by Michael James
6 Espinoza, upon a finding that Michael James Espinoza has, or is, engaged in a course of repeated
7 and willful violation of the laws and regulations pertaining to an automotive repair dealer.

8 34. Pursuant to Health and Safety Code section 44072.8, if Smog Check, Test Only
9 Station License Number TC 243376, issued to Michael James Espinoza, Owner, dba A Discount
10 Smog Check Center #1, is revoked or suspended, any additional license issued under Chapter 5 of
11 Part 5 of Division 26 in the name of said licensee may be likewise revoked or suspended by the
12 director.

13 35. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
14 License Number EO 141208, issued to Michael James Espinoza, is revoked or suspended, any
15 additional license issued under Chapter 5 of Part 5 of Division 26 in the name of said licensee
16 may be likewise revoked or suspended by the director.

17 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 243376,
22 issued to Michael James Espinoza dba A Discount Smog Check Center #1;

23 2. Revoking or suspending Smog Test Only Station License No. TC 243376 issued to
24 Michael James Espinoza dba A Discount Smog Check Center #1;

25 3. Revoking or suspending Smog Check Inspector License No. EO 141208, issued to
26 Michael James Espinoza;

1 4. Ordering Michael James Espinoza to pay the Director of the Department of Consumer
2 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to
3 Business and Professions Code section 125.3; and

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

5
6 DATED: As of Digital Signature Date

Dorais,
Patrick@DCA

Digitally signed by Dorais,
Patrick@DCA
Date: 2022.06.30 15:37:41
-07'00'

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

