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7

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

12 In the Matter of the Accusation Against:

Case No. 79/20-15092

13 **MARIO ALONSO ALMEIDA dba 6TH**
14 **STREET SMOG**
38702 6th St., East
15 Palmdale, CA 93550

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
ARD 251667
17 **Smog Check, Test Only Station License No.**
TC 251667

18 **MARIO ALONSO ALMEIDA**
19 36716 Little Sycamore St.
20 Palmdale, CA 93552

21 **Smog Check Inspector License No. EO**
630615
22 **Smog Check Repair Technician No. EI**
23 **630615**
24

25 Respondent.

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 (Bureau), Department of Consumer Affairs.

2. In 2007, the Bureau issued Automotive Repair Dealer Registration Number ARD 251667 to Mario Alonso Almeida dba 6th Street 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 August 31, 2021, unless renewed.

3. On or about September 27, 2007, the Bureau issued Smog Check, Test Only Station License Number TC 251667 to 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 August 31, 2021, unless renewed.

4. On or about February 19, 2013, 6th Street Smog was certified as a STAR Station. This certification will remain unless the Automotive Repair Dealer Registration and/or Smog Check Station License is revoked, canceled, licenses become delinquent, or the certification is invalidated.

OTHER LICENSES

5. On or about August 15, 2012, the Bureau issued Smog Check Inspector License Number EO 630615 to Mario Alonso Almeida. The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

6. On or about August 15, 2012, the Bureau issued Smog Check Repair Technician License Number EI 630615 to Mario Alonso Almeida. The Smog Check Repair Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

JURISDICTION

7. 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. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary

proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

9. Health and Safety Code (“HSC”) 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.

10. Section 44072.6 of the HSC 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.

STATUTORY PROVISIONS

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

“(a) the director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.”

12. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations shall be performed in accordance with procedures prescribed by the department.

13. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance shall be issued if a vehicle meets the requirement of HSC section 40012.

1 14. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform
2 tests or repairs of emission control devices or systems of motor vehicles required by the Motor
3 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified
4 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.
5 Motor Vehicle Inspection Program Requirements).

6 15. Section 44059 of the HSC provides:

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

11 16. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

21 12. Section 44072.10 of the HSC states, in pertinent part:

22

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

26

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

28

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

3 **REGULATORY PROVISIONS**

4 17. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
5 states:

6 “The bureau may suspend or revoke the license of or pursue other legal action against a
7 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
8 certificate of noncompliance.”

9 18. California Code of Regulations (“CCR”), title 16, section 3340.30, subdivision (a),
10 states in pertinent part:

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

13 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
14 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
15 article

16 19. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
17 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
18 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
19 this article and has all the required emission control equipment and devices installed and
20 functioning correctly.”

21 20. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into
22 the emissions inspection system any access or qualification number other than as authorized by
23 the bureau, nor in any way tamper with the emissions inspection system.”

24 21. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
25 procedures which apply to all vehicles inspected in the State of California

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27 ///

28 ///

COST RECOVERY

22. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board “may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

CALIFORNIA AUTOMOTIVE REPAIR ACT AND SMOG CHECK PROGRAM

23. California's Smog Check Program requires most vehicles in the State to undergo a smog check inspection every two years or when the vehicle's title is transferred.

Inspection of Pre-2000 Model Year Vehicles

24. A smog check inspection of a pre-2000 model year vehicle includes three parts: visual, functional, and tailpipe. Technicians are required to perform the test in accordance with the Smog Check Manual. Technicians are required to enter the results of the inspection into the Emission Inspection System (EIS), which determines whether a vehicle passed the inspection based on the results of the tailpipe, visual, and functional tests. A vehicle must pass all three parts to pass the overall inspection and receive a Certificate of Compliance. The Certificate of Compliance is then transmitted electronically to the Vehicle Information Database.

25. In the visual portion, the technician inspects the emission control components to verify that the required emission control devices are present and properly connected.

26. The functional test includes checking the malfunction indicator light. On-Board Diagnostics (OBD) is a term used to describe a vehicle's computer system that controls the emission control, along with many other features. This system includes self-diagnostic and reporting functions. OBD systems monitor the vehicle's emission control system performance and notify the driver when defects that cause an increase in air pollution are identified.

a. For vehicles pre-1996 model year, the technician must also check the ignition timing and Exhaust Gas Recirculation system, conduct a low pressure test of the evaporative emissions controls, conduct a visible smoke test, and conduct a pressure test of the fuel cap.

1 b. For vehicles that are 1996 model year or newer, the functional test is
2 performed using the vehicle's OBD II system. During an OBD II functional test, the technician is
3 required to connect a test cable from the BAR-97 analyzer to a Diagnostic Link Connector,
4 located in the passenger compartment, which outputs information from the vehicle's on-board
5 computer about the status of readiness indicators, trouble codes, and the malfunction indicator
6 light.

7 27. The tailpipe inspection requires different testing equipment based on the area
8 where the vehicle is registered: Enhanced Areas, Basic Areas, and Change of Ownership Areas.

9 a. Acceleration Simulation Mode Inspection: Pre-2000 model year vehicles
10 registered in Enhanced Areas require an Acceleration Simulation Mode (ASM) inspection, which
11 is performed using an EIS, also known as a BAR-97. The EIS is a computer based, five-gas
12 analyzer that measures Hydrocarbons (HC), Carbon Monoxide (CO), Nitrogen Oxide (NO_x),
13 Carbon Dioxide (CO₂) and Oxygen (O₂). The ASM inspection entails two loaded mode
14 sequences (i.e., "Mode 1" and "Mode 2") that measure the vehicle's tailpipe emissions on a
15 dynamometer. The vehicle's drive wheels are placed onto rollers, and the vehicle is driven at
16 speeds of 15 miles per hour during Mode 1 of the ASM and 25 miles per hour during Mode 2 of
17 the ASM. The purpose of the ASM inspection is to simulate driving conditions while the
18 emissions are sampled and measured by the EIS.

19 b. Two Speed Idle Inspection: Pre-2000 model year vehicles registered in
20 Basic Areas or Change Ownership Areas, and vehicles that are incompatible with the ASM
21 inspection¹, require a Two Speed Idle (TSI) inspection. Rather than applying a load to the
22 vehicle's drive wheels with a dynamometer, the EIS measures the emissions of HC, CO, O₂, and
23 CO₂ at two test sequences—2500 revolutions per minute and idle.

24 28. Carbon Dioxide (CO₂) is a byproduct of most combustion processes and any level
25 of emissions will not result in a failing smog check. The measurement is meant as a diagnostic
26 tool for inspectors. Oxygen (O₂) is necessary for engine combustion to occur. High levels of O₂

27 ¹ Vehicles that are incompatible with the ASM, such as all-wheel drive vehicles are vehicles with
28 traction control issues, must receive the Two Speed Idle (TSI) test.

1 in the exhaust indicate a problem with the catalytic converter, but any level of O₂ emissions will
2 not result in failing smog check. The measurement is meant as a diagnostic tool for inspectors.
3 Carbon Monoxide (CO) is a pollutant and is often the byproduct of an overly rich fuel mixture.
4 Unhealthy CO emissions will result in a vehicle failing smog check. Hydrocarbon (HC), a
5 pollutant, is unburned fuel. High levels of HC emissions indicate incomplete fuel combustion,
6 either as the result of a misfire or low engine compression, and result in a vehicle failing its smog
7 check. Nitrogen Oxide (NO_x) is a pollutant that results from excessive engine combustion
8 chamber temperature, which could be caused by a lean fuel mixture, advanced timing, carbon
9 buildup, malfunctioning EGR, or a malfunctioning engine cooling system. Unhealthy levels of
10 NO_x emissions result in a vehicle failing its smog inspection.

11 **Respondents Fraudulent Inspections Via the “Clean Gassing” Process**

12 29. “Clean gassing” refers to a fraudulent smog inspection practice in which a
13 surrogate gas is introduced into the Emission Inspection System (EIS) during an inspection in
14 order to skew pollutant emission readings. The surrogate gas alters the vehicle exhaust samples
15 and causes the EIS to issue a passing test result based on a reading of false/alterd exhaust
16 emissions rather than a reading of the actual vehicle emissions. The Bureau is able to identify
17 fraudulent clean gassing activities by analyzing specific “second-by-second” emissions data that
18 is recorded by the EIS during a smog inspection. Second-by-second data refers to vehicle
19 emissions and speed data that is recorded on a second-by-second basis throughout the smog
20 check acceleration simulation mode (ASM) test. For example, dramatic simultaneous drops
21 and/or rises in the concentrations of NO_x, CO and/or HC during a smog inspection indicates that
22 a surrogate gas was introduced at specific times during the inspection in order to obtain passable
23 readings for those pollutants.

24 30. Based on a review of confidential smog check data collected and maintained by
25 the Bureau, a Bureau Program Representative initiated an investigation of the smog check
26 activities at 6th Street Smog. During his investigation, the Bureau Program Representative
27 conducted a detailed review of second-by-second emissions data for smog inspections performed
28 at 6th Street Smog. That second-by-second data revealed that respondent has been engaged in

1 the fraudulent smog inspection practice of clean gassing described above. Specifically, the
2 investigation identified the following nine (9) separate instances of clean gassing by respondents
3 at 6th Street Smog:

4 **a. 1999 Toyota 4Runner:** On May 13, 2019 at 4:44 p.m., 6th Street Smog employee
5 and Licensed Smog Inspector R.R. inspected a 1999 Toyota 4Runner (license no. 5CBG228).
6 The second-by-second test data reveals that a surrogate gas was introduced during Mode 1 of the
7 ASM, at a period of steady state vehicle speed, which resulted in dramatic simultaneous drops
8 the in concentration levels for NO_x, CO and HC at the 20 second mark of the test. Those
9 simultaneous drops were followed by a simultaneous rise of the same three pollutants at the 46
10 second mark and then another dramatic simultaneous drop of all three pollutants during Mode 2
11 of the ASM at the 61 second mark. Those simultaneous drops were followed by a simultaneous
12 rise of the same 3 pollutants at the 80 second mark. As a result of respondent's fraudulent clean
13 gassing activities, the vehicle passed the ASM inspection based on false/alterd exhaust
14 emissions readings rather than readings of the vehicle's true emissions levels, leading to the
15 fraudulent issuance of Certificate of Compliance No. QS189087C by respondent. Bureau
16 records show that the vehicle failed a prior smog inspection, performed on May 8, 2019, due to
17 elevated pollutant concentration levels measured by the EIS during the ASM test.

18 **b. 1997 Toyota Camry:** On June 3, 2019 at 5:19 p.m., R.R. inspected a 1997 Toyota
19 Camry (license no. 8DUT381). The second-by-second test data reveals that a surrogate gas was
20 introduced during Mode 1 of the ASM, at a period of steady state vehicle speed, which resulted
21 in dramatic simultaneous drops the in concentration levels for NO_x, CO and HC at the 16 second
22 mark of the test. Those simultaneous drops were followed by a simultaneous rise of the same
23 three pollutants at the 37 second mark and then another dramatic simultaneous drop of all three
24 pollutants during Mode 2 of the ASM at the 50 second mark. Those simultaneous drops were
25 followed by a simultaneous rise of the same 3 pollutants at the 71 second mark. As a result of
26 respondent's fraudulent clean gassing activities, the vehicle passed the ASM inspection based on
27 false/alterd exhaust emissions readings rather than readings of the vehicle's true emissions
28 levels, leading to the fraudulent issuance of Certificate of Compliance No. QS650032C by

1 respondent. Bureau records show that the vehicle failed a prior smog inspection, performed by
2 Mario Alonso Almeida on June 1, 2019, due to elevated pollutant concentration levels measured
3 by the EIS during the ASM test.

4 **c. 1999 Chevrolet Tahoe:** On June 6, 2019 at 6:50 p.m., R.R. inspected a 1999
5 Chevrolet Tahoe (license no. 6YLY398). The second-by-second test data reveals that a surrogate
6 gas was introduced during Mode 1 of the ASM, at a period of steady state vehicle speed, which
7 resulted in dramatic simultaneous drops the in concentration levels for NOx, CO and HC at the
8 28 second mark of the test. Those simultaneous drops were followed by a simultaneous rise of
9 the same three pollutants at the 53 second mark and then another dramatic simultaneous drop of
10 all three pollutants during Mode 2 of the ASM at the 57 second mark and began to rise toward
11 prior levels at the 78 second mark. As a result of respondent's fraudulent clean gassing
12 activities, the vehicle passed the ASM inspection based on false/altered exhaust emissions
13 readings rather than readings of the vehicle's true emissions levels, leading to the fraudulent
14 issuance of Certificate of Compliance No. QS650034C by respondent. Bureau records show
15 that the vehicle failed a prior smog inspection, performed by Mario Alonso Almeida on June 5,
16 2019, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

17 **d. 1990 Jeep Wrangler:** On June 12, 2019 at 5:01 p.m., respondent R.R. inspected a
18 1990 Jeep Wrangler (license no. 6AMB598). The second-by-second test data reveals that a
19 surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state vehicle
20 speed, which resulted in dramatic simultaneous drops the in concentration levels for NOx, CO
21 and HC at the 9 second mark of the test. Those simultaneous drops were followed by a
22 simultaneous rise of the same three pollutants at the 16 second mark. A second dramatic
23 simultaneous drop of all three pollutants occurred during Mode 2 of the ASM at the 19 second
24 mark and began to rise toward prior levels at the 44 second mark. A third dramatic drop of the
25 same three pollutants occurred at the 50 second mark and began to rise toward prior levels at the
26 60 second mark. A fourth dramatic drop of the same three pollutants occurred at the 63 second
27 mark and began to rise toward prior levels at the 70 second mark. As a result of respondent's
28 fraudulent clean gassing activities, the vehicle passed the ASM inspection based on false/altered

1 exhaust emissions readings rather than readings of the vehicle's true emissions levels, leading to
2 the fraudulent issuance of Certificate of Compliance No. QS650045C by respondent. Bureau
3 records show that the vehicle failed a prior smog inspection, performed by R.R. on June 11,
4 2019, due to elevated pollutant concentration levels measured by the EIS during the ASM test.

5 **e. 1998 Acura 3.0CL:** On July 31, 2019 at 7:45 p.m., R.R. inspected a 1998 Acura
6 3.0CL (license no. 7GZD031). The second-by-second test data reveals that a surrogate gas was
7 introduced during Mode 1 of the ASM, at a period of steady state vehicle speed, which resulted
8 in dramatic simultaneous drops the in concentration levels for NO_x, CO and HC at the 10 second
9 mark of the test. Those simultaneous drops were followed by a simultaneous rise of the same
10 three pollutants at the 52 second mark. A second dramatic simultaneous drop of all three
11 pollutants occurred during Mode 2 of the ASM at the 38 second mark and began to rise toward
12 prior levels at the 32 second mark. A third dramatic drop of the same three pollutants occurred
13 at the 57 second mark and began to rise towards prior levels at the 78 second mark. As a result
14 of respondent's fraudulent clean gassing activities, the vehicle passed the ASM inspection based
15 on false/altered exhaust emissions readings rather than readings of the vehicle's true emissions
16 levels, leading to the fraudulent issuance of Certificate of Compliance No. IF650780C by
17 respondent. Bureau records show that the vehicle failed a prior smog inspection, performed by
18 R.R. on July 30, 2019, due to elevated pollutant concentration levels measured by the EIS during
19 the ASM test.

20 **f. 1989 Jeep Cherokee:** On September 19, 2019 at 7:04 p.m., R.R. inspected a 1989
21 Jeep Cherokee (license no. 4WDXJ). The second-by-second test data reveals that a surrogate gas
22 was introduced during Mode 1 of the ASM, at a period of steady state vehicle speed, which
23 resulted in dramatic simultaneous drops the in concentration levels for NO_x, CO and HC at the 5
24 second mark of the test. Those simultaneous drops were followed by a simultaneous rise of the
25 same three pollutants at the 29 second mark. A second dramatic simultaneous drop of all three
26 pollutants occurred during Mode 2 of the ASM at the 33 second mark and began to rise toward
27 prior levels at the 40 second mark. A third simultaneous drop occurred at the 45 second mark
28 and began to rise towards prior levels at the 61 second mark. As a result of respondent's

1 fraudulent clean gassing activities, the vehicle passed the ASM inspection based on false/alterd
2 exhaust emissions readings rather than readings of the vehicle's true emissions levels, leading to
3 the fraudulent issuance of Certificate of Compliance No. QY315558C by respondent. Bureau
4 records show that the vehicle failed a prior smog inspection, performed by R.R. on September
5 12, 2019, due to elevated pollutant concentration levels measured by the EIS during the ASM
6 test.

7 **g. 1994 Honda Civic:** On October 1, 2019 at 4:30 p.m., R.R. inspected a 1994 Honda
8 Civic (license no. 3JSM187). The second-by-second test data reveals that a surrogate gas was
9 introduced during Mode 1 of the ASM, at a period of steady state vehicle speed, which resulted
10 in dramatic simultaneous drops the in concentration levels for NOx, CO and HC at the 3 second
11 mark of the test. Those simultaneous drops were followed by a simultaneous rise of the same
12 three pollutants at the 14 second mark. A second dramatic simultaneous drop of all three
13 pollutants occurred during Mode 2 of the ASM at the 18 second mark and began to rise toward
14 prior levels at the 34 second mark. A third simultaneous drop occurred at the 40 second mark
15 and began to rise toward prior levels at the 58 second mark. As a result of respondent's
16 fraudulent clean gassing activities, the vehicle passed the ASM inspection based on false/alterd
17 exhaust emissions readings rather than readings of the vehicle's true emissions levels, leading to
18 the fraudulent issuance of Certificate of Compliance No. QY315584C by respondent. Bureau
19 records show that the vehicle failed a prior smog inspection, on May 26, 2018, due to elevated
20 pollutant concentration levels measured by the EIS during the ASM test.

21 **h. 1995 Toyota 4Runner:** On November 23, 2019 at 2:34 p.m., R.R. inspected a
22 1995 Toyota 4Runner (license no. 3NSS019). The second-by-second test data reveals that a
23 surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state vehicle
24 speed, which resulted in dramatic simultaneous drops the in concentration levels for NOx, CO
25 and HC at the 11 second mark of the test. Those simultaneous drops were followed by a
26 simultaneous rise of the same three pollutants at the 29 second mark and then another dramatic
27 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 47 second mark and
28 began to rise toward prior levels at the 66 second mark. As a result of respondent's fraudulent

1 clean gassing activities, the vehicle passed the ASM inspection based on false/alterd exhaust
2 emissions readings rather than readings of the vehicle's true emissions levels, leading to the
3 fraudulent issuance of Certificate of Compliance No. RA410685C by respondent. Bureau
4 records show that the vehicle failed a prior smog inspection, performed by Mario Alonso
5 Almeida on August 7, 2019, due to elevated pollutant concentration levels measured by the EIS
6 during the ASM test.

7 **i. 1998 Chevrolet C1500 Pickup:** On January 25, 2020 at 3:52 p.m., R.R. inspected
8 a 1998 Chevrolet C1500 Pickup (license no. 5S64576). The second-by-second test data reveals
9 that a surrogate gas was introduced during Mode 1 of the ASM, at a period of steady state
10 vehicle speed, which resulted in dramatic simultaneous drops the in concentration levels for
11 NOx, CO and HC at the 10 second mark of the test. Those simultaneous drops were followed by
12 a simultaneous rise of the same three pollutants at the 49 second mark and then another dramatic
13 simultaneous drop of all three pollutants during Mode 2 of the ASM at the 68 second mark and
14 began to rise toward prior levels at the 78 second mark. As a result of respondent's fraudulent
15 clean gassing activities, the vehicle passed the ASM inspection based on false/alterd exhaust
16 emissions readings rather than readings of the vehicle's true emissions levels, leading to the
17 fraudulent issuance of Certificate of Compliance No. RC917887C by respondent. Bureau
18 records show that the vehicle failed a prior smog inspection, performed by Mario Alonso
19 Almeida on January 22, 2020, due to elevated pollutant concentration levels measured by the EIS
20 during the ASM test.

21 **FIRST CAUSE FOR DISCIPLINE**

22 (Misleading Statements)

23 31. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
24 (a)(1), in that respondent and/or their employee made statements which were known to be untrue
25 or misleading or, which by exercise of reasonable care should have been known to be untrue or
26 misleading, when issuing electronic smog certificates of compliance for the vehicles set forth in
27 paragraph 30, subparagraphs a - i, above, certifying that those vehicles were in compliance with
28 applicable laws and regulations when, in fact, those vehicles had not been so inspected.

1 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs
2 23 through 30, inclusive, as though set forth fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Fraud)

5 32. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
6 (a)(4), in that respondent and/or their employee committed acts which constitute fraud by issuing
7 electronic smog certificates of compliance for the vehicles set forth in paragraph 30,
8 subparagraphs a - i, above, without performing bona fide inspections of the emission control
9 devices and systems on those vehicles, thereby depriving the People of the State of California of
10 the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by
11 this reference incorporates, the allegations contained in paragraphs 23 through 30, inclusive, as
12 though set forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Material Violation of Automotive Repair Act)

15 33. Respondent is subject to disciplinary action under Code section 9884.7, subdivision
16 (a)(6), in that respondent and/or their employee failed in a “material respect to comply with the
17 provisions of this chapter or regulations adopted pursuant to it” when issuing electronic smog
18 certificates of compliance for the vehicles set forth in paragraph 30, subparagraphs a - i, above,
19 without performing bona fide inspections of the emission control devices and systems on those
20 vehicles, thereby depriving the People of the State of California of the protection afforded by the
21 Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
22 allegations contained in paragraphs 23 through 30, inclusive, as though set forth fully herein.

23 **FOURTH CAUSE FOR DISCIPLINE**

24 (Violation of Motor Vehicle Inspection Program)

25 34. Respondent is subject to disciplinary action under HSC section 44072.2, subdivision (a), in
26 that, with respect to the vehicles set forth in paragraph 30, subparagraphs a - i, above, respondent
27 violated the following sections of the HSC:
28

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

b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of compliance without properly testing and inspecting the vehicles to determine if they were in compliance with section 44012 of the HSC.

FIFTH CAUSE FOR DISCIPLINE

(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)

35. Respondent is subject to disciplinary action under HSC section 44072.2, subdivision (c), in that, with respect to the vehicles set forth in paragraph 30, subparagraphs a - i, above, respondent violated the following sections of title 16 of the CCR:

a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic smog certificates of compliance without performing bona fide inspections of the emission control devices and systems on those vehicles as required by HSC section 44012.

b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of compliance even though those vehicles had not been inspected in accordance with section 3340.42 of the HSC.

c. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections on those vehicles in accordance with the Bureau's specifications.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

36. Respondent is subject to disciplinary action under HSC section 44072.2, subdivision (d), in that, with respect to the vehicles set forth in paragraph 30, subparagraphs a - i, above, respondent committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing electronic smog certificates of compliance for those vehicles without performing bona fide inspections and functional testing of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates the allegations contained in in paragraphs 23 through 30, inclusive, as though set forth fully herein.

1 **OTHER MATTERS**

2 37. Section 9884.7, subdivision (c), of the Code states that “the director may suspend,
3 revoke, or place on probation the registration for all places of business operated in this state by an
4 automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a
5 course of repeated and willful violations of this chapter, or regulations adopted pursuant to.”

6 38. Section 44072.8 of the HSC states that if Smog Check Station License No. TC
7 251667 is revoked or suspended following a hearing, any additional license issued under the
8 Motor Vehicle Inspection Program (HSC sec. 44000, et seq.) in the name of the licensee may be
9 likewise revoked or suspended by the director.

10 **DISCIPLINE CONSIDERATIONS**

11 39. To determine the degree of discipline, if any, to be imposed on respondent,
12 Complainant further alleges the following:

13 40. On or about February 8, 2010, in a prior action, the Bureau issued citation number
14 C2010-0801 to respondent with a fine of \$500, for violating HSC section 44012 subdivision (f).
15 Payment was received on April 1, 2010. The citation is now final and is incorporated by reference
16 as if fully set forth.

17 41. On or about June 24, 2010, in a prior action, the Bureau issued citation number
18 C2010-1347 to respondent with a fine of \$1,500, for violating HSC section 44012 subdivision (f).
19 Payment was received on January 26, 2012. The citation is now final and is incorporated by
20 reference as if fully set forth.

21 42. On or about February 8, 2010, in a prior action, the Bureau issued citation number
22 M2010-802 to Mario Alonso Almeida for violating HSC section 44032 and ordered him to
23 complete an 8-hour training course. The training was completed on April 7, 2010. The citation is
24 now final and is incorporated by reference as if fully set forth.

25 43. On or about June 24, 2010, in a prior action, the Bureau issued citation number
26 M2010-1348 to Mario Alonso Almeida for violating HSC section 44032 and ordered him to
27 complete a 16-hour training course. Training has not been completed. The citation is now final
28 and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 251667, issued to Mario Alonso Almeida dba 6th Street Smog;
2. Revoking or suspending any other automotive repair dealer registration issued to Mario Alonso Almeida;
3. Revoking or suspending Smog Check, Test Only Station License Number TC 251667, issued to Mario Alonso Almeida dba 6th Street Smog;
4. Revoking or suspending any additional license issued under Chapter 5 Part 5 of Division 26 of the HSC in the name of Mario Alonso Almeida;
5. Ordering Mario Alonso Almeida dba 6th Street Smog to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: as of digital signature date

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

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