

XAVIER BECERRA
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
DIANE DEKERVOR
Deputy Attorney General
State Bar No. 174721
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9415
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against:

Case No. 79/19-7843

**STEVEN THOMAS BRENTANO, Owner,
dba POWAY SMOG
13510 Pomerado Rd, Ste. A
Poway, CA 92064**

**A C C U S A T I O N
(Smog Check)**

-and-

**8426 Mesa Ridge Rd.
Santee, CA. 92071**

**Automotive Repair Dealer Registration
Number ARD 267841
Smog Check, Test Only Station License
Number TC 267841**

-and-

**ROBERT SOUHEL HOUSHAN
12666 Roberto Way
Poway, CA 92064**

-and-

**13825 Powers Rd.
Poway, CA. 92064**

**Smog Check Inspector License
Number EO 151237, Smog Check Repair
Technician License Number EI 151237**

Respondents.

1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about January 31, 2012, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration (ARD) Number ARD 267841 to Steven Thomas Brentano, owner, dba
7 Poway Smog, (Respondent Poway Smog). The Automotive Repair Dealer Registration was in
8 full force and effect at all times relevant to the charges brought herein and will expire on
9 January 31, 2020, unless renewed.

10 3. On or about February 21, 2012, the Bureau of Automotive Repair issued Smog
11 Check, Test Only Station License Number TC 267841 to Respondent Poway Smog. The Smog
12 Check, Test Only Station License was in full force and effect at all times relevant to the charges
13 brought herein and will expire on January 31, 2020, unless renewed.

14 4. On or about October 15, 2012, the Bureau of Automotive Repair issued Smog Check
15 Inspector License number EO 151237 to Robert Souhel Houshan (Respondent Houshan). The
16 Smog Check Inspector License was in full force and effect at all times relevant to the charges
17 brought herein and will expire on October 31, 2020, unless renewed.

18 5. On or about October 15, 2012, the Bureau of Automotive Repair issued Smog Check
19 Repair Technician License number EI 151237 to Respondent Houshan. The Smog Check Repair
20 Technician License was in full force and effect at all times relevant to the charges brought herein.
21 The Smog Check Repair Technician License expired on October 31, 2014 and has not been
22 renewed.

23 **JURISDICTION**

24 6. This Accusation is brought before the Director of the Department of Consumer
25 Affairs (Director) for the Bureau of Automotive Repair (Bureau), under the authority of the
26 following laws. All references are to the Business and Professions Code (Code), unless otherwise
27 specified.

28 ///

7. Code section 9884.7 provides that the Director may revoke or suspend an automotive repair dealer registration.

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (revoking or suspending) a registration.

9. 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.

10. 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 disciplinary action.

11. Health and Safety Code section 44072.8 provides that 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

12. 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.

1 “ . . .

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

4 “ . . .

5 “(b) Except as provided for in subdivision (c), if an automotive repair dealer operates more
6 than one place of business in this state, the director pursuant to subdivision (a) shall only suspend,
7 revoke, or place on probation the registration of the specific place of business which has violated
8 any of the provisions of this chapter. This violation, or action by the director, shall not affect in
9 any manner the right of the automotive repair dealer to operate his or her other places of business.

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

14 13. Section 44072.2 of the Health and Safety Code states:

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

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

21 “ . . .

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

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

24 “ . . .”

25 14. Section 44012 of the Health and Safety Code states:

26 “The test at the smog check stations shall be performed in accordance with procedures
27 prescribed by the department and may require loaded mode dynamometer testing in enhanced
28 areas, two-speed idle testing, testing utilizing a vehicle’s onboard diagnostic system, or other

1 appropriate test procedures as determined by the department in consultation with the state board.
2 The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode
3 dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning
4 no earlier than January 1, 2013. However, the department, in consultation with the state board,
5 may prescribe alternative test procedures that include loaded mode dynamometer or two-speed
6 idle testing for vehicles with onboard diagnostic systems that the department and the state board
7 determine exhibit operational problems. The department shall ensure, as appropriate to the test
8 method, the following:

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

12 “(b) Motor vehicles are preconditioned to ensure representative and stabilized operation
13 of the vehicle’s emission control system.

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

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

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

27 “(f) A visual or functional check is made of emission control devices specified by the
28 department, including the catalytic converter in those instances in which the department

determines it to be necessary to meet the findings of Section 44001. The visual or functional check shall be performed in accordance with procedures prescribed by the department.

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

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

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

15. Section 44015 of the Health and Safety Code states:

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

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

"(2) A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036. A vehicle identified pursuant to subparagraph (K) of paragraph (3) of subdivision (b) of Section 44036 shall be directed to the department to determine whether an inadvertent error can explain the irregularity, or whether the vehicle otherwise meets smog check requirements, allowing the certificate for compliance to be issued, or the vehicle shall be reinspected by a referee or another smog check station.

". . .

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

". . .

"(f) Excluding any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1 of the Vehicle Code, and except as otherwise provided in

1 Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle
2 dealer shall be responsible for having a smog check inspection performed on, and a certificate of
3 compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate
4 issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle
5 is sold and registered to a retail buyer, whichever occurs first.

6 "(g) A test may be made at any time within 90 days prior to the date otherwise required."

7 **REGULATIONS**

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

9 "(a) A licensed station shall purchase certificates of compliance and noncompliance from
10 the bureau or an authorized agent of the bureau only, and under the following terms and
11 conditions:

12 "(1) A certificate of compliance or noncompliance shall be purchased by a licensed
13 station for a fee determined pursuant to section 3340.35.1 of these regulations; and

14 "(2) Full payment is required at the time the certificates are ordered.

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

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

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

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

26 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to
27 be a valid certificate of compliance or noncompliance unless duly licensed to do so.

28 ///

1 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a
2 certificate of compliance or noncompliance."

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

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

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

8 "(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-
9 year vehicle, except diesel-powered, registered in the enhanced program areas of the state. The
10 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of
11 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of
12 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode
13 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

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

22 "(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999
23 model-year vehicles, except diesel-powered, registered in all program areas of the state, except in
24 those areas of the state where the enhanced program has been implemented. The two-speed idle
25 mode test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high
26 RPM and again at idle RPM, as contained in the bureau's specifications referenced in subsection
27 (a) of Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection
28 shall be measured and compared to the emission standards set forth in this section and as shown

1 in Table III. A vehicle passes the two-speed idle mode test if all of its measured emissions are less
2 than or equal to the applicable emissions standards specified in Table III.

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

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

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

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

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

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

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

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

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

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

26 "(2) Vehicles with emission levels exceeding the emission standards for gross
27 polluters during an initial inspection will be considered gross polluters and the provisions
28

1 pertaining to gross polluting vehicles will apply, including, but not limited to, sections 44014.5,
2 44015, and 44081 of the Health and Safety Code.

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

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

9 18. California Code of Regulations, title 16, section 3340.42.2, states, in relevant part:

10 "...

11 "(c) Starting on or after January 1, 2013, OBD equipped vehicles shall fail the OBD
12 inspection if any one of the following conditions occurs as applicable to the vehicle:

13 "...

14 "(7) The vehicle's OBD system data is inappropriate for the vehicle being tested;

15 "(8) The vehicle's OBD system data does not match the original equipment manufacturer
16 (OEM) or an Air Resources Board (ARB) exempted OBD software configuration. . ."

17 **COST RECOVERY**

18 19. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 **FACTUAL BACKGROUND**

23 20. A Bureau representative conducted a detailed review of the Bureau's Vehicle
24 Information Database (VID)¹ for OIS smog check inspections² purportedly performed at Poway

25 _____
26 ¹ The VID provides pertinent information related to each smog inspection conducted at a
27 smog check facility, including emission control system data, smog check history, vehicle
28 profiling data, station and technician data, and smog certificate data.

² On March 9, 2015, the Bureau implemented a statewide change requiring the use of a
new On-Board Diagnostic Inspection System (OIS) for the smog inspections of 2000 model year

1 Smog from September 2018 through April 2019. The review of the OIS Test Data showed that
2 Respondents inspected the six (6) vehicles identified below using a method known as “clean
3 plugging”³, since the PID count, communication protocol and/or eVIN reported during the OIS
4 inspection for the vehicle supposedly being tested, *did not match* the actual PID count value⁴,
5 communication protocol⁵ or eVIN⁶ belonging to that vehicle. All of these fraudulent smog
6 inspections were conducted by Respondent Houshan, an employee of Poway Smog. This resulted
7 in the issuance of fraudulent smog certificates by Respondents, as follows:

8 **a. Clean Plug 1**

9 The OIS Test Data reflects that on September 29, 2018, a 2013 Toyota Scion FR-S passed
10 an OIS smog inspection conducted by Respondent Houshan. Certificate of Compliance #
11 QO885494C was issued by Respondent Poway Smog. For the smog inspection, the reported
12 Communication Protocol was ICAN11bt5, the PID count was 39/15, and the eVIN was
13 transmitted as 1FAHP3M25CL379002.

14 However, comparative OIS Test Data for a 2013 Toyota Scion FR-S shows that the
15 expected Communication Protocol for this vehicle is ICAN11bt5, the PID count is 45, 45/15, 47,
16 or 47/15, and the correct eVIN is reported during the smog test.

17
18
19 and newer gas powered vehicles, 14,000 Gross Vehicle Weight Rating (GVW) and under, and
1998 and newer diesel powered vehicles, 14,000 GVW and under.

20 ³ “Clean plugging” refers to the use of another vehicle’s properly functioning On-Board
21 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
22 readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
23 are not in smog compliance and/or not present for testing.

24 ⁴ Parameter Identifications (PIDs) are data points reported by the vehicle’s OBD II system
25 electronic control unit (ECU) to the scan tool or OIS during a smog inspection. Some examples
26 of PIDs are engine speed, vehicle speed, engine temperature, and other input and output values
27 utilized by the OBD II system ECU on the vehicle. The “PID count” is the total number of the
28 data points reported by the OBD II system ECU on that vehicle.

⁵ The OBD II communication protocol is the specified communication “language” used by
the OBD II system ECU to communicate to scan tools and other devices such as the On-Board
Diagnostic Inspection System. Examples of the communication protocol are “JVPW”, “JPWM”
and “I914.”

⁶ The manufacturer’s electronically programmed Vehicle Identification Number, also
known as the “eVIN,” is captured by the OIS during a smog inspection and should match the
physical Vehicle Identification Number present on the vehicle.

1 On April 23, 2018, a previous test was performed on the 2013 Toyota Scion FR-S. The
2 OIS Test Data for the 2013 Toyota Scion FR-S shows that the eVIN was transmitted as
3 JF1ZNAA19D2727076, the communication protocol was transmitted as ICAN11bt5, and the PID
4 count was 45/15, consistent with the expected OIS Test Data and similar vehicle OIS Test Data.

5 Additionally, the OIS Test Data shows a 2012 Ford Focus SEL, VIN
6 #1FAHP3M25CL379002, was the vehicle used to generate the fraudulent Smog Certificate of
7 Compliance for the 2013 Toyota Scion FR-S. The 2012 Ford Focus SEL was certified by
8 Respondent Houshan at Respondent Poway Smog on September 29, 2018. The OIS test data
9 transmitted for the 2012 Ford Focus SEL matches the OIS Test Data for the fraudulent inspection
10 of the 2013 Toyota Scion FR-S for the eVIN, protocol and PID count.

11 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
12 connected to the 2013 Toyota Scion FR-S that Respondent Houshan certified, thereby causing the
13 issuance of a fraudulent smog Certificate of Compliance.

14 **b. Clean Plug 2**

15 The OIS Test Data reflects that on November 19, 2018, a 2004 Honda Civic EX passed an
16 OIS smog inspection conducted by Respondent Houshan. Certificate of Compliance
17 #HX675538C was issued by Respondent Poway Smog. For the smog inspection, the reported
18 Communication Protocol was I914, the PID count was 18, and the eVIN was missing from the
19 test data.

20 However, comparative OIS Test Data for a 2004 Honda Civic EX shows that the expected
21 Communication Protocol for this vehicle is I914, the PID count is 17, and the correct eVIN is
22 reported during the smog test.

23 On November 26, 2014, a previous test was performed on the 2004 Honda Civic EX. The
24 OIS Test Data for the 2004 Honda Civic EX shows that the eVIN was transmitted as
25 1HGEM22964L012127, the communication protocol was transmitted as I914, and the PID count
26 was 17, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data.

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1 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
2 connected to the 2004 Honda Civic EX that Respondent Houshan certified, thereby causing the
3 issuance of a fraudulent smog Certificate of Compliance.

4 **c. Clean Plug 3**

5 The OIS Test Data reflects that on April 7, 2019, a 2007 Audi Q7 3.6 Quattro Premium
6 passed an OIS smog inspection conducted by Respondent Houshan. Certificate of Compliance #
7 QQ723135C was issued by Respondent Poway Smog. For the smog inspection, the reported
8 Communication Protocol was KWPF, the PID count was 42, and the eVIN was transmitted as
9 KMHFC46F46A060477.

10 However, comparative OIS Test Data for a 2007 Audi Q7 3.6 Quattro Premium shows that
11 the expected Communication Protocol for this vehicle is ICAN11bt5, the PID count is 43, 43/14
12 or 43/14/15, and the correct eVIN is reported during the smog test.

13 Additionally, the OIS Test Data shows a 2006 Hyundai Azera SE, VIN
14 #KMHFC46F46A060477, was the vehicle used to generate the fraudulent Smog Certificate of
15 Compliance for the 2007 Audi Q7 3.6 Quattro Premium. The 2006 Hyundai Azera SE was
16 certified by a different smog inspector at a different smog station on September 10, 2018. The
17 OIS test data transmitted for the 2006 Hyundai Azera SE matches the OIS Test Data for the
18 fraudulent inspection of the 2007 Audi Q7 3.6 Quattro Premium for the eVIN, protocol and PID
19 count.

20 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
21 connected to the 2007 Audi Q7 3.6 Quattro Premium that Respondent Houshan certified, thereby
22 causing the issuance of a fraudulent smog Certificate of Compliance.

23 **d. Clean Plug 4**

24 The OIS Test Data reflects that on April 11, 2019, a 2013 Smart ForTwo Pure passed an
25 OIS smog inspection conducted by Respondent Houshan. Certificate of Compliance #
26 QQ796983C was issued by Respondent Poway Smog. For the smog inspection, the reported
27 Communication Protocol was ICAN11bt5, the PID count was 43/8, and the eVIN was
28 1J4HR58295C665328.

1 However, comparative OIS Test Data for a 2013 Smart ForTwo Pure shows that the
2 Communication Protocol for this vehicle is ICAN11bt5, the PID count is 37, 39, 39/13. Or
3 39/13/15, and the correct eVIN is reported during the smog test.

4 Additionally, the OIS Test Data shows a 2005 Jeep Grand Cherokee Limited, VIN
5 #1J4HR58295C665328 was the vehicle used to generate the fraudulent Smog Certificate of
6 Compliance for the 2013 Smart ForTwo Pure. The 2005 Jeep Grand Cherokee Limited was
7 certified by Respondent Houshan on April 11, 2019. The OIS test data transmitted for the 2005
8 Jeep Cherokee Limited matches the OIS Test Data for the fraudulent inspection of the 2013 Smart
9 ForTwo Pure for the eVIN, protocol and PID count.

10 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
11 connected to the 2013 Smart ForTwo Pure that Respondents certified, thereby causing the
12 issuance of a fraudulent smog Certificate of Compliance.

13 **e. Clean Plug 5**

14 The OIS Test Data reflects that on April 14, 2019, a 2000 Ford F150 passed an OIS smog
15 inspection conducted by Respondent Houshan. Certificate of Compliance # QQ925455C was
16 issued by Respondent Poway Smog. For the smog inspection, the reported Communication
17 Protocol was I914, the PID count was 18, and the eVIN was missing from the test data.

18 However, comparative OIS Test Data for a 2000 Ford F150 shows that the Communication
19 Protocol for this vehicle is JPWM, the PID count is 20, and the correct eVIN is reported during
20 the smog test.

21 On November 10, 2015, a previous test was performed on the 2000 Ford F150. The OIS
22 Test Data for the 2000 Ford F150 shows that the eVIN was transmitted as
23 1FTRX18L8YNA33494, the communication protocol was transmitted as JPWM, and the PID
24 count was 20, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data.

25 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
26 connected to the 2000 Ford F150 that Respondents certified, thereby causing the issuance of a
27 fraudulent smog Certificate of Compliance.

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1 **f. Clean Plug 6**

2 The OIS Test Data reflects that on April 27, 2019, a 2005 Nissan Sentra 1.8 passed an OIS
3 smog inspection conducted by Respondent Houshan. Certificate of Compliance # QS219632C
4 was issued by Respondent Poway Smog. For the smog inspection, the reported Communication
5 Protocol was ICAN11bt5, the PID count was 48, and the eVIN was transmitted as
6 5TFUY5F19BX203096.

7 However, comparative OIS Test Data for a 2005 Nissan Sentra 1.8 shows that the
8 Communication Protocol for this vehicle is I914, the PID count is 18, and the correct eVIN is
9 reported during the smog test.

10 On October 31, 2017, a previous test was performed on the 2005 Nissan Sentra 1.8. The
11 OIS Test Data for the 2005 Nissan Sentra 1.8 shows that the eVIN was transmitted as
12 3N1CB51D85L470778, the communication protocol was transmitted as I914, and the PID count
13 was 18, consistent with the expected OIS Test Data and Similar Vehicle OIS Test Data.

14 Additionally, the OIS Test Data shows a 2011 Toyota Tundra Double Cab SR5, VIN
15 #5TFUY5F19BX203096 was the vehicle used to generate the fraudulent Smog Certificate of
16 Compliance for the 2005 Nissan Sentra 1.8. The 2011 Toyota Tundra Double Cab SR5 was
17 certified by Respondent Houshan on April 27, 2019. The OIS test data transmitted for the 2011
18 Toyota Tundra Double Cab SR5 matches the OIS Test Data for the fraudulent inspection of the
19 2005 Nissan Sentra 1.8 for the eVIN, protocol and PID count.

20 The discrepancies in the OIS Test Data show that the Data Acquisition Device was not
21 connected to the 2005 Nissan Sentra 1.8 that Respondents certified, thereby causing the issuance
22 of a fraudulent smog Certificate of Compliance.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Untrue or Misleading Statements)**

3 21. Respondent Poway Smog's ARD registration is subject to disciplinary action
4 pursuant to Code section 9884.7, subdivision (a)(1), in that Respondent made or authorized
5 statements which it knew, or in the exercise of reasonable care should have known, to be untrue
6 or misleading, as follows: Respondent Steven Thomas Brentano, owner, dba Poway Smog,
7 certified that vehicles 1 through 6, identified above, had passed inspection and were in
8 compliance with applicable laws and regulations. In fact, Respondent Houshan conducted the
9 smog inspections on the vehicles using clean-plugging methods in that he used a different vehicle,
10 or another source, during the BAR-OIS Smog Check Inspection in order to issue certificates of
11 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
12 Code section 44012.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Fraud)**

15 22. Respondent Poway Smog's ARD registration is subject to disciplinary action
16 pursuant to Code section 9884.7, subdivision (a)(4), in that Respondent Steven Thomas Brentano,
17 owner, dba Poway Smog, committed acts which constitute fraud, by issuing electronic smog
18 certificates of compliance for vehicles 1 through 6, identified above, without performing bona
19 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
20 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **THIRD CAUSE FOR DISCIPLINE**

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

24 23. Respondent Poway Smog's smog check, station license is subject to disciplinary
25 action pursuant to Health & Safety Code (Health & Saf. Code) section 44072.2, subdivision (a),
26 in that Respondent failed to comply with the following sections of that Code:

27 a. **Section 44012:** Respondents failed to perform the emission control tests on vehicles
28 1 through 6, identified above, in accordance with procedures prescribed by the Department.

1 b. **Section 44015:** Respondents issued electronic smog certificates of compliance for
2 vehicles 1 through 6, identified above, without ensuring that the vehicles were properly tested and
3 inspected to determine if they were in compliance with Health & Saf. Code section 44012.

4 **FOURTH CAUSE FOR DISCIPLINE**
5 **(Failure to Comply with Regulations Pursuant**
6 **to the Motor Vehicle Inspection Program)**

7 24. Respondent Poway Smog's smog check, station license is subject to disciplinary
8 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that Respondents failed
9 to comply with provisions of California Code of Regulations, title 16, as follows:

10 a. **Section 3340.35, subdivision (c):** Respondents issued electronic smog certificates of
11 compliance for vehicles 1 through 6, identified above, even though the vehicles had not been
12 inspected in accordance with section 3340.42.

13 b. **Section 3340.42:** Respondents failed to ensure that the required smog tests were
14 conducted on vehicles 1 through 6, identified above, in accordance with the Bureau's
15 specifications.

16 c. **Section 3340.42.2, subdivision (c)(7):** Respondents failed to conduct OBD
17 inspections for vehicles 1 through 6, identified above, within the Bureau's specifications in that
18 the OBD system data was inaccurate for the vehicle being tested.

19 d. **Section 3340.42.2, subdivision (c)(8):** Respondents failed to conduct OBD
20 inspections for vehicles 1 through 6, identified above, within the Bureau's specifications in that
21 the vehicle's OBD system data did not match the original equipment manufacturer (OEM) or an
22 Air Resources Board (ARB) exempted OBD software configuration.

23 **FIFTH CAUSE FOR DISCIPLINE**
24 **(Dishonesty, Fraud or Deceit)**

25 25. Respondent Poway Smog's smog check, station license is subject to disciplinary
26 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that Respondents
27 committed dishonest, fraudulent or deceitful acts, whereby another is injured, by issuing
28 electronic smog certificates of compliance for vehicles 1 through 6, identified above, without

performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

SIXTH CAUSE FOR DISCIPLINE

(Violations of the Motor Vehicle Inspection Program)

26. Respondent Houshan's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with section 44012 of that Code, in a material respect, as follows: Respondent Houshan failed to perform the emission control tests on vehicles 1 through 6, identified above, in accordance with procedures prescribed by the Department.

SEVENTH CAUSE FOR DISCIPLINE

**(Failure to Comply with Regulations Pursuant
to the Motor Vehicle Inspection Program)**

27. Respondent Houshan's Smog Check Inspector License and Smog Check Repair Technician License are subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with provisions of California Code of Regulations, title 16, as follows:

a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles 1 through 6, identified above, in accordance with Health & Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

b. **Section 3340.42:** Respondent failed to conduct the required smog tests on vehicles 1 through 6, identified above, in accordance with the Bureau's specifications.

c. **Section 3340.41, subdivision (c):** Respondent entered into the emissions inspection system vehicle identification information or emission control system identification data for a vehicle other than the one being tested for vehicles 1 through 6, identified above.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent Houshan's Smog Check Inspector License and Smog Check Repair
4 Technician License are subject to disciplinary action pursuant to Health & Saf. Code section
5 44072.2, subdivision (d), in that he committed dishonest, fraudulent, or deceitful acts, whereby
6 another is injured, by issuing electronic smog certificates of compliance for vehicles 1 through 6,
7 identified above, without performing bona fide inspections of the emission control devices and
8 systems on the vehicles.

9 **DISCIPLINARY CONSIDERATIONS**

10 29. On or about April 23, 2015, the Bureau issued Steven Thomas Brentano d.b.a. Poway
11 Smog, Citation #C2015-314, for his actions in violation of section 44012 of the Health and Safety
12 Code in that Respondent Poway Smog improperly inspected and certified a vehicle using the
13 BAR-97 when the OIS test was required. A Citation Service Conference was held on May 21,
14 2015. The citation was informally appealed on June 16, 2015. The citation was modified to an
15 Order of Abatement on August 10, 2015. The citation was formally appealed on September 9,
16 2015. The Decision became effective on September 26, 2017.

17 30. On or about July 12, 2017, the Bureau issued Steven Thomas Brentano d.b.a. Poway
18 Smog, Citation #C2017-1376, for his actions in violation of section 44012 of the Health and
19 Safety Code in that Poway Smog inspected and certified a vehicle with missing emission control
20 system components. A Citation Service Conference was held on August 21, 2017. The citation
21 was informally appealed on September 18, 2017. The citation was affirmed and reissued on
22 October 5, 2017. On October 13, 2017, Respondent requested an administrative hearing. The
23 citation was affirmed and the decision became effective November 8, 2019.

24 31. On or about June 3, 2010, the Bureau issued Robert Souhel Houshan Citation
25 #M2010-1240 for his actions in violation of section 44032 of the Health and Safety Code and
26 3340.30(a) of the California Code of Regulations in that Robert Souhel Houshan inspected and
27 certified a vehicle with missing emission control system components. A Citation Service
28 Conference was held on June 29, 2010. Training was completed on July 11, 2010.

32. On May 5, 2015, the Bureau issued Robert Souhel Houshan, Citation and Order of Abatement # M2015-406, for his actions in violation of section 44032 of the Health and Safety Code, and section 3340C of the California Code of Regulations, in that Robert Souhel Houshan inspected and certified a vehicle using the BAR-97 when the OIS test was required. A Citation Service Conference was held on May 21, 2015. The citation was appealed. The citation became effective on September 26, 2017.

33. On July 12, 2017, the Bureau issued Robert Souhel Houshan, Citation # M2017-1377, for his actions in violation of section 44032 of the Health and Safety Code, in that Robert Souhel Houshan inspected and certified a vehicle with missing emission control system components. A Citation Service Conference was held on August 15, 2017. On October 5, 2017, the Bureau notified Respondent Houshan that the cause for the citation had been affirmed, however, the Bureau modified the required certified smog check training course from 28 hours to 8 hours and rescinded the administrative fine of \$500.00. On October 5, 2017, the citation was reissued, with these modifications and the Notice of Abatement was also reissued. On October 13, 2017, Respondent Houshan requested an administrative hearing. The citation was affirmed and the decision became effective November 8, 2019.

OTHER MATTERS

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

35. Under Health & Saf. Code section 44072.8, if the Smog Check Station License issued to Respondent Poway Smog is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the Director.

36. Under Health and Saf. Code section 44072.8, if Smog Check Inspector License and/or Smog Check Repair Technician License Number issued to Respondent Houshan is/are revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of

1 the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the
2 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 267841 issued to Steven Thomas Brentano, Owner, dba Poway Smog;

8 2. Revoking or suspending any other automotive repair dealer registration issued to
9 Steven Thomas Brentano;

10 3. Revoking or suspending Smog Check, Station License Number TC 267841 issued to
11 Steven Thomas Brentano, Owner, dba Poway Smog;

12 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
13 Division 26 of the Health & Saf. Code in the name of Steven Thomas Brentano;

14 5. Revoking or suspending Smog Check Inspector License Number EO 151237 and
15 Smog Check Repair Technician License Number EI 151237 issued to Robert Souhel Houshan;

16 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
17 Division 26 of the Health & Saf. Code in the name of Robert Souhel Houshan;

18 7. Ordering Steven Thomas Brentano and/or Robert Souhel Houshan to pay the Bureau
19 of Automotive Repair the reasonable costs of the investigation and enforcement of this case,
20 pursuant to Business and Professions Code section 125.3; and,

21 8. Taking such other and further action as deemed necessary and proper.

22
23 DATED: November 14, 2019

Signature On File

24 PATRICK DORAIS
25 Chief
26 Bureau of Automotive Repair
27 Department of Consumer Affairs
28 State of California
Complainant

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