

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
  
**SMOGMAN; MICHAEL MAGDY  
ASHAM, Owner  
7431 Rosedale Highway, Suite B  
Bakersfield, CA 93308**  
  
**909 Woodmont Drive  
Bakersfield, CA 93312**  
  
**Automotive Repair Dealer Registration No.  
ARD 272800  
Smog Check, Test Only, Station License No.  
TC 272800**  
  
**MICHAEL MAGDY ASHAM  
909 Woodmont Drive  
Bakersfield, CA 93312**  
  
**Smog Check Inspector License No. EO  
635055**  
  
Respondents.

Case No. 79/15-92

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1  
2           1.     On or about March 6, 2015, Complainant Patrick Dorais, in his official capacity as  
3 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs, filed Accusation  
4 No. 79/15-92 against Smogman, with Michael Magdy Asham as the owner, and Michael Magdy  
5 Asham, in his personal capacity, before the Director of Consumer Affairs. (Accusation with  
6 service documents attached as Exhibit A.)

7           2.     On or about May 6, 2013, the Bureau of Automotive Repair issued Automotive  
8 Repair Dealer Registration Number ARD 272800 to Smogman; Michael Magdy Asham, Owner  
9 (“Respondent Smogman”). The Automotive Repair Dealer Registration was in full force and  
10 effect at all times relevant to the charges brought herein and will expire on May 31, 2015, unless  
11 renewed.

12           3.     On or about June 26, 2013, the Bureau of Automotive Repair issued Smog Check  
13 Test Only Station License Number TC 272800 to Respondent Smogman. The Smog Check Test  
14 Only Station License was in full force and effect at all times relevant to the charges brought  
15 herein and will expire on May 31, 2015, unless renewed.

16           4.     On or about December 19, 2012, the Bureau of Automotive Repair issued Smog  
17 Check Inspector License Number EO 635055 to Michael Magdy Asham (“Respondent Asham”).  
18 The Smog Check Inspector License was in full force and effect at all times relevant to the charges  
19 brought herein and will expire on August 31, 2016, unless renewed.

20           5.     On or about March 6, 2015, Respondent Asham and Respondent Smogman  
21 (collectively, “Respondents”) were served by Certified and First Class Mail copies Accusation  
22 No. 79/15-92, Statement to Respondent, Notice of Defense, Request for Discovery, and  
23 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at their  
24 corresponding addresses of record which, pursuant to Business and Professions Code section 136,  
25 are required to be reported and maintained with the Bureau. Respondent Asham’s address of  
26 record was and is:

27 909 Woodmont Dr.  
28 Bakersfield, CA 93312.

1 Respondent Smogman's address of record was and is:

2 7431 Rosedale Highway, Suite B  
3 Bakersfield, CA 93308.

4 Respondent Smogman also has an official mailing address of:

5 909 Woodmont Dr.  
6 Bakersfield, CA 93312.

7 6. Service of the Accusation was effective as a matter of law under the provisions of  
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
9 124.

10 7. On or about March 9, 2015, the Accusation served to 7431 Rosedale Highway, Suite  
11 B, Bakersfield, CA 93308, was delivered. A certified mailing receipt was signed by "ISA  
12 Doyou." Nonetheless, both the certified and first class mailing of the Accusation were returned  
13 by the U.S. Postal Service. On both copies, the recipient hand wrote on the envelope: "no longer  
14 here, send back." The U.S. Postal Service then returned the documents on March 17, 2015,  
15 marked "undeliverable as addressed – no forwarding address on file." The address on the  
16 documents was the same as the address on file for Respondent Smogman with the Bureau.

17 8. On or about March 10, 2015, the Accusation served to 909 Woodmont Drive,  
18 Bakersfield, CA 93312, the address of record for Respondent Asham and the mailing address for  
19 Respondent Smogman was delivered. A certified mailing receipt was signed by "M. Asham."  
20 The address on the documents was the same as the address on file with the Bureau for both  
21 Respondent Smogman and Respondent Asham. Nonetheless, neither Respondent filed a Notice  
22 of Defense.

23 9. Government Code section 11506 states, in pertinent part:

24 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
25 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
26 of the accusation not expressly admitted. Failure to file a notice of defense shall  
27 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
28 may nevertheless grant a hearing.

29 10. Respondents failed to file a Notice of Defense within 15 days after service upon them  
30 of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No.  
31 79/15-92.

1 11. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at the  
3 hearing, the agency may take action based upon the respondent's express admissions  
4 or upon other evidence and affidavits may be used as evidence without any notice to  
5 respondent.

6 12. Pursuant to its authority under Government Code section 11520, the Director after  
7 having reviewed the proof of service dated March 6, 2015, signed by Carolina Lopez-Castillo,  
8 (and return envelopes as well as signed certified mailing receipts) finds Respondents are in  
9 default. The Director will take action without further hearing and, based on Accusation No.  
10 79/15-92, the proof of service for Accusation No. 79/15-92, and on the Affidavit of Bureau  
11 Representative Jose Salas, finds that the allegations in Accusation No. 79/15-92 are true.

#### 11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent Smogman has subjected its  
13 Automotive Repair Dealer Registration No. ARD 272800 and its Smog Check Test Only Station  
14 License No. TC 272800 to discipline.

15 2. Based on the foregoing findings of fact, Respondent Asham has subjected his  
16 Smog Check Inspector License No. EO 635055 to discipline.

17 3. The agency has jurisdiction to adjudicate this case by default.

18 4. The Director of Consumer Affairs is authorized to revoke Respondent Smogman's  
19 Automotive Repair Dealer Registration and Smog Check Test Only Station License, as well as  
20 Respondent Asham's Smog Check Inspector License based upon the following violations alleged  
21 in the Accusation which are supported by the evidence contained in the affidavit of Bureau  
22 Representative Jose Salas in this case:

23 a. Respondent Smogman's automotive repair dealer registration is subject to discipline  
24 pursuant to section 9884.7, subdivision (a)(1), in that on or about October 7 and 8, 2014,  
25 Respondent Smogman made statements which it knew or which by exercise of reasonable care  
26 should have known to be untrue or misleading, as follows: Respondent Smogman's inspector,  
27 Respondent Asham, certified that twenty-three had passed inspection and were in compliance  
28 with applicable laws and regulations. In fact, Respondent Asham used clean piping and clean

1 plugging methods in order to issue certificates for those vehicles and did not test or inspect the  
2 vehicles as required by Health and Safety Code § 44012. The conduct is described with greater  
3 specificity in Accusation No. 79/15-92, which is hereby incorporated by reference as though set  
4 forth fully.

5 b. Respondent Smogman's automotive repair dealer registration is subject to discipline  
6 pursuant to section 9884.7, subdivision (a)(4), in that on or about October 7 and 8, 2014,  
7 Respondent Smogman committed acts constituting fraud by issuing certificates of compliance for  
8 twenty-three vehicles without performing a bona fide inspection of the emission control devices  
9 and systems on the vehicles, thereby depriving the People of the State of California of the  
10 protection afforded by the Motor Vehicle Inspection Program. The conduct is described with  
11 greater specificity in Accusation No. 79/15-92, which is hereby incorporated by reference as  
12 though set forth fully.

13 c. Respondent Smogman's smog check station license is subject to discipline pursuant  
14 to Health & Safety Code section 44072.2, subdivision (a), in that on or about October 7 and 8,  
15 2014, Respondent Smogman failed to comply with the sections 44012, 44015, and section 44059  
16 of the Health & Safety Code. The conduct is described with greater specificity in Accusation No.  
17 79/15-92, which is hereby incorporated by reference as though set forth fully.

18 d. Respondent Smogman's smog check station license is subject to discipline pursuant  
19 to Health & Safety Code section 44072.2, subdivision (c), in that on or about October 7 and 8,  
20 2014, Respondent Smogman failed to comply with sections 3340.24, subdivision (c), 3340.35,  
21 subdivision (c), and 3340.41, subdivision (c), of title 16 of the California Code of Regulations.  
22 The conduct is described with greater specificity in Accusation No. 79/15-92, which is hereby  
23 incorporated by reference as though set forth fully.

24 e. Respondent Smogman's smog check station license is subject to discipline pursuant  
25 to Health & Safety Code section 44072.2, subdivision (d), in that on or about October 7 and 8,  
26 2014, Respondent Smogman committed dishonest, fraudulent or deceitful acts whereby another  
27 was injured by issuing electronic certificates of compliance for twenty-three vehicles without  
28 performing bona fide inspections of the emission control devices and systems on the vehicles,

1 thereby depriving the People of the State of California of the protection afforded by the Motor  
2 Vehicle Inspection Program. The conduct is described with greater specificity in Accusation No.  
3 79/15-92, which is hereby incorporated by reference as though set forth fully..

4 f. Respondent Asham's smog check inspector license is subject to discipline pursuant to  
5 Health and Safety Code section 44072.2, subdivision (a), and Health and Safety Code section  
6 44032 in that on or about October 7 and 8, 2014, Respondent Asham violated sections 44012,  
7 44015, and 44059 of the Health and Safety Code. The conduct is described with greater  
8 specificity in Accusation No. 79/15-92, which is hereby incorporated by reference as though set  
9 forth fully.

10 g. Respondent Asham's smog check inspector license is subject to discipline  
11 pursuant to Health and Safety Code section 44072.2, subdivision (c), in that on or about October  
12 7 and 8, 2014, Respondent Asham violated sections 3340.24, subdivision (c), 3340.35,  
13 subdivision (c), and 3340.41, subdivision (c), of title 16 of the California Code of Regulations,.  
14 The conduct is described with greater specificity in Accusation No. 79/15-92, which is hereby  
15 incorporated by reference as though set forth fully.

16 h. Respondent Asham's smog check inspector license is subject to discipline  
17 pursuant to Health and Safety Code section 44072.2, subdivision (d), in that on or about October  
18 7 and 8, 2014, Respondent Asham committed acts involving dishonesty, fraud or deceit whereby  
19 another was injured by issuing electronic certificate of compliance for twenty-three vehicles  
20 without performing bona fide inspections of the emission control devices and systems on the  
21 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
22 Motor Vehicle Inspection Program. The conduct is described with greater specificity in  
23 Accusation No. 79/15-92, which is hereby incorporated by reference as though set forth fully.

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER

IT IS SO ORDERED that Automotive Repair Dealer Registration No. ARD 272800 and Smog Check Test Only Station License No. TC 272800, heretofore issued to Respondent Smogman; Michael Magdy Asham as well as Smog Check Inspector License No. EO 635055, heretofore issued to Respondent Michael Magdy Asham, are revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondents. The motion should be sent to the Bureau of Automotive Repair, ATTN: William D. Thomas, 10949 North Mather Blvd., Rancho Cordova, CA 95670. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on November 4, 2015.  
It is so ORDERED October 4, 2015

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

51754226.DOC  
DOJ Matter ID: LA2014513060

Attachment:  
Exhibit A: Accusation with service documents

# Exhibit A

Accusation (with service documents)

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 ZACHARY T. FANSELOW  
Deputy Attorney General  
4 State Bar No. 274129  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2562  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 79/15-92

12 OAH No. 2015020014

13 **SMOGMAN; MICHAEL MAGDY**  
**ASHAM, Owner**  
14 **7431 Rosedale Highway, Suite B**  
**Bakersfield, CA 93308**

**ACCUSATION**

15 **909 Woodmont Drive**  
**Bakersfield, CA 93312**

16 **Automotive Repair Dealer Registration No.**  
17 **ARD 272800**  
18 **Smog Check, Test Only, Station License No.**  
**TC 272800**

19 **MICHAEL MAGDY ASHAM**  
20 **909 Woodmont Drive**  
**Bakersfield, CA 93312**

21 **Smog Check Inspector License No. EO**  
**635055**

22 Respondents.

23  
24  
25 Complainant alleges:

26 **PARTIES**

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





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

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

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

17 13. Health and Safety Code Section 44015 states, in pertinent part:

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

21 14. Health and Safety Code Section 44032 states, in pertinent part:

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

27 15. Health and Safety Code Section 44059 states:

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

16. Health and Safety Code section 44072.2 states:

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

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

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

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

3 . . . .

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

5 17. Health and Safety Code section 44072.8 states:

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

9 **REGULATORY PROVISIONS**

10 18. California Code of Regulations, title 16, section 3340.24, subdivision (c), provides that  
11 "[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee,  
12 if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of  
13 noncompliance."

14 19. California Code of Regulations, title 16, section 3340.30, subdivision (a), provides, in  
15 pertinent part, that a licensed technician shall inspect, test and repair vehicles in accordance with  
16 section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and  
17 section 3340.42 of the California Code of Regulations.

18 20. California Code of Regulations, title 16, section 3340.35, subdivision (c), provides, in  
19 pertinent part, that 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 the California Code of Regulations and have all the required  
22 emission control equipment and devices installed and functioning correctly.

23 21. California Code of Regulations, title 16, section 3340.41, subdivision (c), provides that  
24 no person shall enter into the emissions inspection system any vehicle identification information or  
25 emission control system identification data for any vehicle other than the one being tested. Nor  
26 shall any person knowingly enter any false information about the vehicle being tested into the  
27 emissions inspection system.

28 ///

1 COST RECOVERY

2 22. Section 125.3 provides, in pertinent part, that a Board may request the administrative  
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
5 case.

6 VIDEO SURVEILLANCE OPERATION OF OCTOBER 7-8, 2014

7 23. Between October 7, 2014 and October 8, 2014, representatives of the Bureau  
8 conducted a video surveillance operation of Respondent Smogman's smog check facility. The  
9 surveillance operation and information obtained from the BAR's Vehicle Information Database  
10 ("VID")<sup>2</sup> revealed that Respondent Smogman through the actions of Respondent Asham  
11 performed twenty-three (23) smog inspections that resulted in the issuance of electronic  
12 certificates of compliance for the vehicles set forth in the below table, certifying that Respondent  
13 Smogman and Respondent Asham (collectively, "Respondents") had tested and inspected those  
14 vehicles and that the vehicles were in compliance with applicable laws and regulations. In fact,  
15 Respondents performed the smog inspections using the clean piping<sup>3</sup> method by utilizing the tail  
16 pipe emissions of vehicles other than the vehicles being certified as well as the clean plugging<sup>4</sup>  
17 method by plugging the Bar 97 OBDII connector into the OBDII system of vehicles other than the  
18 vehicles being certified in order to issue the electronic certificates of compliance.

19  
20  
21  
22  
23 <sup>2</sup> The VID reveals a variety of information concerning each test conducted at Smogman,  
including information the advanced emission specialist technician license number of the technician  
24 who conducted the test, date of the test, and the start and end times of the test.

25 <sup>3</sup> Pursuant to California Code of Regulations, title 16, section 3340.1, "clean piping" means  
the use of a sample of the exhaust emissions of one vehicle in order to cause the EIS to issue a  
certificate of compliance for another vehicle.

26 <sup>4</sup> To clean plug, a smog technician either enters vehicle information into the EIS for the  
27 vehicle he wishes to certify and then performs a complete smog inspection on a different (properly  
28 functioning) vehicle; or performs an incomplete smog inspection on the vehicle he wishes to certify  
and then plugs the OBDII connector from the BAR 97 EIS into a vehicle believed to have a  
functioning OBDII system.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Test Date	Test Times	Vehicle in EIS Data (License Plate #)	Vehicle Tested (License Plate #)	Certificate Issued
10/7/14	1042-1049	2000 Dodge Ram 1500 (8D91042)	2001 BMW 3301 (5KFD295)	YL020971C
10/7/14	1053-1059	2000 GMC Sonoma (7S91583)	2001 BMW 3301 (5KFD295)	YL020972C
10/7/14	1152-1200	2003 Mitsubishi Lancer (5MCG362)	1997 Toyota Camry (6GSC828)	YL020973C
10/7/14	1206-1213	1991 Nissan Pickup (4J87514)	1997 Toyota Camry (6GSC828)	YL020974C
10/7/14	1248-1254	1996 Chevrolet Impala (4VDG967)	1997 Toyota Camry (6GSC828)	YL020976C
10/7/14	1334-1343	2002 Chevrolet Impala VIN 2G1WF52E929248490	1997 Toyota Camry (6GSC828)	YL020978C
10/7/14	1615-1624	1999 Honda Civic (5ZUR527)	1993 Toyota Pickup (4N53523) and 1997 Toyota Camry (6GSC828)	YL020980C
10/7/14	1731-1739	1983 Toyota Pickup (18971G1)	1997 Toyota Camry (6GSC828)	YL020985C
10/7/14	1758-1804	1986 Chevrolet Monte Carlo (6LQF111)	1997 Toyota Camry (6GSC828)	YL020987C
10/7/14	1807-1815	1996 Geo Prizm (3SVK048)	1997 Toyota Camry (6GSC828)	YL020988C
10/7/14	1834-1842	2003 Chrysler Voyager (5ATF459)	00's model GMC Sonoma (Lic: N/A) and 1997 Toyota Camry (6GSC828)	YL020989C
10/7/14	1846-1851	1996 Mercedes S500 (3RJY295)	1997 Toyota Camry (6GSC828)	YL020990C
10/8/14	0650-0659	1989 Nissan Pickup (3W08616)	1997 Toyota Camry (6GSC828)	YL020991C
10/8/14	0703-0713	1995 Honda Civic (3MQR015)	1997 Toyota Camry (6GSC828)	YL020992C
10/8/14	0718-0725	2005 Honda Civic (6VCZ068)	00's model GMC Sonoma (Lic: N/A)	YL020993C
10/8/14	0729-0736	1999 Ford Mustang (5RDR318)	00's model GMC Sonoma (Lic: N/A)	YL020994C
10/8/14	0742-0748	2007 Ford Mustang VIN: IZVFT82H175216579	00's model GMC Sonoma (Lic: N/A)	YL020995C

10/8/14	0752-0800	2002 Suzuki Grand Vitara (4ZNW687)	1997 Toyota Camry (6GSC828)	YL020996C
10/8/14	0811-0818 and 1132-1140 <sup>5</sup>	1999 Honda Civic (4GKM457)	1997 Toyota Camry (6GSC828)	YL020997C
10/8/14	1153-1200	1995 Toyota Camry (6VIN895)	1997 Toyota Camry (6GSC828)	YL020998C
10/8/14	1204-1214	2004 Ford Taurus (DP822EK)	00's model GMC Sonoma (Lic: N/A)	YL020999C
10/8/14	1218-1226	2000 Ford Mustang (5RKK125)	00's model GMC Sonoma (Lic: N/A)	YL021000C
10/8/14	1410-1420	1996 Toyota Camry (6WVT376)	00's model GMC Sonoma (Lic: N/A)	YL091502C

**FIRST CAUSE FOR DISCIPLINE**

**(Untrue or Misleading Statements)**

24. Respondent Smogman's automotive repair dealer registration is subject to discipline pursuant to section 9884.7, subdivision (a)(1), in that on or about October 7 and 8, 2014, Respondent Smogman made statements which it knew or which by exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Smogman's inspector, Respondent Asham, certified that the vehicles identified in paragraph 23 above had passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Asham used clean piping and clean plugging methods in order to issue certificates for those vehicles and did not test or inspect the vehicles as required by Health and Safety Code § 44012. Complainant refers to, and by this reference incorporates, the information contained in paragraph 23 and the attached table as though set forth fully.

**SECOND CAUSE FOR DISCIPLINE**

**(Fraud)**

25. Respondent Smogman's automotive repair dealer registration is subject to discipline pursuant to section 9884.7, subdivision (a)(4), in that on or about October 7 and 8, 2014,

<sup>5</sup> A test of the 1999 Honda Civic began at approximately 08:11 but was incomplete. A second test began at approximately 11:32 and a certificate of compliance was issued after this second test. Respondents clean piped this vehicle twice, but only one certificate of compliance was issued.

1 Respondent Smogman committed acts constituting fraud by issuing certificates of compliance for  
2 the vehicles identified in the table attached to paragraph 23 above without performing a bona fide  
3 inspection of the emission control devices and systems on the vehicles, thereby depriving the  
4 People of the State of California of the protection afforded by the Motor Vehicle Inspection  
5 Program. Complainant refers to, and by this reference incorporates, the information contained in  
6 paragraph 23 and the attached table as though set forth fully.

7 **THIRD CAUSE FOR DISCIPLINE**

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

9 26. Respondent Smogman's smog check station license is subject to discipline pursuant to  
10 Health & Safety Code section 44072.2, subdivision (a), in that on or about October 7 and 8, 2014,  
11 Respondent Smogman failed to comply with the following sections of the Health & Safety Code:

12 a. **Section 44012:** Respondent Smogman failed to perform the emission control tests on  
13 the vehicles identified in the table attached to paragraph 23 above in accordance with procedures  
14 prescribed by the department.

15 b. **Section 44015:** Respondent Smogman issued electronic certificates of compliance for  
16 the vehicles identified in the table attached to paragraph 23 above without properly inspecting the  
17 vehicles to determine if it was in compliance with Health & Safety Code section 44012.

18 c. **Section 44059:** Respondent Smogman, through its technician Respondent Asham,  
19 willfully made false entries in the EIS, resulting in the issuance of fraudulent certificates of  
20 compliance for the vehicles identified in paragraph 23 above.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Comply with Regulations Adopted**

23 **Pursuant to the Motor Vehicle Inspection Program)**

24 27. Respondent Smogman's smog check station license is subject to discipline pursuant to  
25 Health & Safety Code section 44072.2, subdivision (c), in that on or about October 7 and 8, 2014,  
26 Respondent Smogman failed to comply with provisions of California Code of Regulations, title 16,  
27 for the vehicles identified in paragraph 23 above, as follows:

28 a. **Section 3340.24, subdivision (c):** Respondent Asham falsely or fraudulently issued

1 electronic smog certificates of compliance for the vehicles identified in paragraph 23 above.

2 b. **Section 3340.35, subdivision (c):** Respondent Asham issued electronic smog  
3 certificates of compliance for the vehicles identified in the table attached to paragraph 23 above  
4 even though the vehicles had not been inspected in accordance with section 3340.42.

5 c. **Section 3340.41, subdivision (c):** Respondent Smogman authorized or permitted its  
6 inspector, Respondent Asham, to enter false information into the EIS by entering vehicle  
7 identification information or emission control system identification data for vehicles other than the  
8 ones being tested.

9 **FIFTH CAUSE FOR DISCIPLINE**

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

11 28. Respondent Smogman's smog check station license is subject to discipline pursuant  
12 to Health & Safety Code section 44072.2, subdivision (d), in that on or about October 7 and 8,  
13 2014, Respondent Smogman committed dishonest, fraudulent or deceitful acts whereby another  
14 was injured by issuing electronic certificates of compliance for the vehicles identified in paragraph  
15 23 above without performing bona fide inspections of the emission control devices and systems on  
16 the vehicles, thereby depriving the People of the State of California of the protection afforded by  
17 the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates,  
18 the information contained in paragraph 23 and the attached table as though set forth fully.

19 **SIXTH CAUSE FOR DISCIPLINE**

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

21 29. Respondent Asham's smog check inspector license is subject to discipline pursuant  
22 to Health and Safety Code section 44072.2, subdivision (a), and Health and Safety Code section  
23 44032 in that on or about October 7 and 8, 2014, Respondent Asham violated the following  
24 sections of the Health and Safety Code:

25 a. **Section 44012:** Respondent Asham failed to perform the emission control tests on  
26 the vehicles identified in the table attached to paragraph 23 above in accordance with procedures  
27 prescribed by the department.

28



1 attached to paragraph 23 above without performing bona fide inspections of the emission control  
2 devices and systems on the vehicles, thereby depriving the People of the State of California of the  
3 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this  
4 reference incorporates, the information contained in paragraph 23 and the attached table as though  
5 set forth fully.

#### 6 DISCIPLINARY CONSIDERATIONS

7 32. To determine the degree of discipline, if any, to be imposed on Respondent Smogman,  
8 Complainant alleges that on or about November 15, 2013, the Bureau of Automotive Repair  
9 issued Citation Number C2014-0321 to Respondent Smogman and ordered Respondent Smogman  
10 to pay a fine of \$1,000.00. That Citation is now final and is incorporated by reference as if fully  
11 set forth.

12 33. To determine the degree of discipline, if any, to be imposed on Respondent Asham,  
13 Complainant alleges that on or about November 15, 2013, the Bureau of Automotive Repair  
14 issued Citation Number M2014-0322 to Respondent Asham and ordered Respondent Asham to  
15 complete an eight (8) hour Bureau of Automotive Repair Certified Training Course. That Citation  
16 is now final and is incorporated by reference as if fully set forth.

#### 17 OTHER MATTERS

18 34. Pursuant to Business and Professions Code section 9884.7, subdivision (c), the  
19 Director may suspend, revoke or place on probation the registration for all places of business  
20 operated in this state by Michael Magdy Asham, owner of Respondent Smogman, upon a finding  
21 that Respondent Smogman has, or is, engaged in a course of repeated and willful violations of the  
22 laws and regulations pertaining to an automotive repair dealer.

23 35. Pursuant to Health & Safety Code section 44072.8, if Smog Check Test Only Station  
24 License Number TC 272800, issued to Michael Magdy Asham, owner of Respondent Smogman, is  
25 revoked or suspended, any additional license issued under this chapter in the name of said licensee  
26 may be likewise revoked or suspended by the Director.

27 36. Pursuant to Health & Safety Code section 44072.8, if Smog Check Inspector License  
28 Number EO 635055, issued to Michael Magdy Asham, is revoked or suspended, any additional

1 license issued under this chapter in the name of said licensee may be likewise revoked or  
2 suspended by the Director.

3 P R A Y E R

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 272800 issued Michael Magdy Asham, owner of Smogman;

8 2. Revoking or suspending any other automotive repair dealer registration issued to  
9 Michael Magdy Asham;

10 3. Revoking or suspending Smog Check Test Only Station License Number TC 272800,  
11 issued to Michael Magdy Asham, owner of Smogman;

12 4. Revoking or suspending Smog Check Inspector License Number EO 635055 issued to  
13 Michael Magdy Asham;

14 5. Revoking or suspending any additional license issued under Chapter 5 of the Health  
15 and Safety Code in the name of Michael Magdy Asham;

16 6. Ordering Michael Magdy Asham, individually, and as owner of Smogman, to pay the  
17 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this  
18 case, pursuant to Business and Professions Code section 125.3; and,

19 7. Taking such other and further action as deemed necessary and proper.  
20

21  
22 DATED: March 4, 2015

23 PAT DORAIS by Donna BALATT  
24 PATRICK DORAIS  
25 Chief  
26 Bureau of Automotive Repair  
27 Department of Consumer Affairs  
28 State of California  
Complainant

LA2014513060  
51707045.doc