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

12 In the Matter of the Accusation Against:
13 **KING SMOG TEST ONLY,**
14 **NANCY DIAS, OWNER**
15 **13182 Garden Grove Boulevard, #B**
16 **Garden Grove, California 92843**
17 **And**
18 **523 S. KING ST.**
SANTA ANA, CA 92704
Automotive Repair Dealer Registration No.
19 **ARD 273691**
Smog Check-Test Only Station License No.
20 **TC 273691**

21 **ALLEN DIAZ,**
22 **523 S. KING ST.**
SANTA ANA, CA 92704
Smog Check Inspector License No. EO
23 **153340**
Smog Check Repair Technician License No.
24 **EI 153340 (formerly Advanced Emission**
25 **Specialist Technician License No. EA**
26 **153340,**

27 **JASON ROMAN**
1221 S. KING ST
SANTA ANA, CA 92704
Smog Check Inspector License No. EO
28 **635380)**

Respondents.

Case No. *79/15-127*

ACCUSATION
Smog Check

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 July 18, 2013, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 273691 to Nancy Dias, dba King Smog Test Only
7 Center (Respondent N. Dias). The Automotive Repair Dealer Registration was in full force and
8 effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless
9 renewed.

10 3. On or about August 13, 2013, the Bureau of Automotive Repair issued Smog Check-
11 Test Only Station License Number TC 273691 to Nancy Dias, dba King Smog Test Only Center.
12 The Smog Check-Test Only Station License was in full force and effect at all times relevant to the
13 charges brought herein and will expire on July 31, 2015, unless renewed.

14 4. On or about October 31, 2015, the Bureau of Automotive Repair issued STAR
15 Certification Number issued to Nancy Dias, dba King Smog Test Only Center (Respondents);

16 5. In 2006, the Bureau of Automotive Repair issued Advanced Emissions Specialist
17 License Number EA 153340 to Allen Diaz (Respondent A. Diaz).

18 6. On or about June 11, 2014, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 153340 to Allen Diaz (Respondent A. Diaz). The Smog Check
20 Inspector License was in full force and effect at all times relevant to the charges brought herein
21 and will expire on April 17, 2015, unless renewed.

22 7. On or about November 18, 2014, the Bureau of Automotive Repair issued Smog
23 Check Repair Technician Number EI 153340 to Allen Diaz (Respondent A. Diaz). The Smog
24 Check Repair Technician was in full force and effect at all times relevant to the charges brought
25 herein and will expire on April 17, 2015, unless renewed.

26 8. On or about April 8, 2013, the Bureau of Automotive Repair issued Smog Check
27 Inspector License Number EO 635380 to Jason Roman (Respondent Roman). The Smog Check
28

1 Inspector License was in full force and effect at all times relevant to the charges brought herein
2 but did expire on January 31, 2015.

3 JURISDICTION

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

7 10. Code section 22, subdivision (a), states:

8 "Board" as used in any provision of this Code, refers to the board in which
9 the administration of the provision is vested, and unless otherwise expressly
10 provided, shall include "bureau," "commission," "committee," "department,"
"division," "examining committee," "program," and "agency."

11 11. Code section 118, subdivision (b) states:

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

17 12. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
18 "commission," "committee," "department," "division," "examining committee," "program," and
19 "agency." "License" includes certificate, registration or other means to engage in a business or
20 profession regulated by the Code.

21 13. Code section 9884.5 provides in pertinent part that a registration that is not
22 renewed within three years following its expiration shall not be renewed, restored, or reinstated
23 thereafter, and the delinquent registration shall be canceled immediately upon expiration of the
24 three-year period.

25 14. Code section 9884.7 provides that the Director may revoke an automotive repair
26 dealer registration.

27 15. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
28 registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding

1 against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating, suspending, or revoking a registration.

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

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

10 18. California Code of Regulations, title 16, section 3340.41, states:

11 ...

12 (b) No person shall enter into the emissions inspection system any access
13 or qualification number other than as authorized by the bureau, nor in any way
14 tamper with the emissions inspection system.

15 (c) No person shall enter into the emissions inspection system any
16 vehicle identification information or emission control system identification data
17 for any vehicle other than the one being tested. Nor shall any person knowingly
18 enter into the emissions inspection system any false information about the
19 vehicle being tested.

20 ...

21 19. H & S Code section 44002 provides, in pertinent part, that the Director has all the
22 powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle
23 Inspection Program.

24 20. H & S Code section 44072.2 states:

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

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

(b) Is convicted of any crime substantially related to the qualifications,
functions, or duties of the license holder in question.

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

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

1 (e) Has misrepresented a material fact in obtaining a license.

2 (f) Aids or abets unlicensed persons to evade the provisions of this
chapter.

3 (g) Fails to make and keep records showing his or her transactions as a
4 licensee, or fails to have those records available for inspection by the director or
5 his or her duly authorized representative for a period of not less than three years
6 after completion of any transaction to which the records refer, or refuses to
comply with a written request of the director to make the records available for
inspection.

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

8
9 21. H & S Code section 44072.6 provides, in pertinent part, that the expiration or
10 suspension of a license by operation of law, or by order or decision of the Director, or a court of
11 law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to
12 proceed with disciplinary action.

13 22. H & S Code section 44072.8 states:

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

16
17 23. H & S Code section 44072.10 states, in pertinent part:

18 . . .
19 (c) The department shall revoke the license of any smog check technician
20 or station licensee who fraudulently certifies vehicles or participates in the
fraudulent inspection of vehicles. A fraudulent inspection includes, but is not
limited to, all of the following:

21 (1) Clean piping, as defined by the department.

22 . . .
23 24. California Code of Regulations, title 16 (Regulations), section 3340.28,
24 subdivision (e), states that “[u]pon renewal of an unexpired Basic Area Technician license or an
25 Advanced Emission Specialist Technician license issued prior to the effective date of this
26 regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair
27 Technician, or both.”
28

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

3 ...

4 (f) A visual or functional check is made of emission control devices
5 specified by the department, including the catalytic converter in those instances
6 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.

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

9 ...

10 29. Section 44014 of the Health and Safety Code states:

11 (a) Except as otherwise provided in this chapter, the testing and repair
12 portion of the program shall be conducted by smog check stations licensed by
the department, and by smog check technicians who have qualified pursuant to
13 this chapter.

14 ...

15 30. Section 44032 of the Health and Safety Code states:

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

20 31. H & S Code section 44059 states:

21 The willful making of any false statement or entry with regard to a
22 material matter in any oath, affidavit, certificate of compliance or
23 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
24 Penal Code.

25 REGULATORY PROVISIONS

26 32. California Code of Regulations, title 16 (CCR), section 3340.24 states in pertinent
27 part:

28 ...

1 (c) The bureau may suspend or revoke the license of or pursue other legal
2 action against a licensee, if the licensee falsely or fraudulently issues or obtains
a certificate of compliance or a certificate of noncompliance.

3 33. CCR section 3340.30 states, in pertinent part:

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

6 (a) Inspect, test and repair vehicles, as applicable, in accordance
7 with section 44012 of the Health and Safety Code, section 44035 of the Health
and Safety Code, and section 3340.42 of this article.

8 ...

9 (d) Upon expiration of the inspector and/or repair technician license
immediately cease to inspect, test, or repair failed vehicles, as applicable.

10 ...

11 34. CCR section 3340.35 states, in pertinent part:

12 ...

13 (c) A licensed station shall issue a certificate of compliance or
noncompliance to the owner or operator of any vehicle that has been inspected

14 in accordance with the procedures specified in section 3340.42 of this article
15 and has all the required emission control equipment and devices installed and
functioning correctly. The following conditions shall apply:

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

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

18 ...

19 35. CCR section 3340.41 states, in pertinent part:

20 ...

21 (b) No person shall enter into the emissions inspection system any
access or qualification number other than as authorized by the bureau, nor in
22 any way tamper with the emissions inspection system.

23 (c) No person shall enter into the emissions inspection system any
vehicle identification information or emission control system identification data
24 for any vehicle other than the one being tested. Nor shall any person knowingly
enter into the emissions inspection system any false information about the
25 vehicle being tested.

26 ...

27 ///

28 ///

1 **COST RECOVERY**

2 36. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **BACKGROUND**

9 37. On May 9, 2014, a Bureau of Automotive Repair representative inspected King
10 Smog Test Only Center. The representative observed Respondent A. Diaz performing a smog
11 inspection on a 2000 Toyota Tacoma, California license No. 6J34557. Respondent A. Diaz was
12 not a licensed technician at the time. Respondent A. Diaz conducted the inspection by using the
13 license of Respondent Ramon to access the EIS smog test machine.

14 **FIRST CAUSE FOR DISCIPLINE**
15 **Smog Check-Test Only Station License**
16 **(Failure to Comply with Regulations)**

17 38. Respondent N. Dias has subjected her Smog Check Test-Only Station License to
18 discipline under H & S Code section 44072.2, subdivision (c), in that Respondent Owner failed
19 to comply with provisions of California Code of Regulations, Title 16, as follows:

20 a. **Section 3340.35, subdivision (d):** Respondent N. Dias' employee issued
21 an electronic smog certificate of compliance for the 2000 Toyota as referenced in paragraph 37,
22 above, even though the vehicle had not been inspected in accordance with section 3340.42.

23 b. **Section 3340.41 :** Respondent N. Dias' employee failed to conduct the
24 required smog tests on the 2000 Toyota referenced in paragraphs 37, above, in accordance with
25 the Bureau's specifications.

26 **SECOND CAUSE FOR DISCIPLINE**
27 **Smog Check Inspector License**
28 **(Failure to Comply with Regulations)**

39. Respondent A. Diaz has subjected her Smog Check Inspector License to discipline under
H & S Code section 44072.2, subdivision (c), in that on May 9, 2014, Respondent A. Diaz failed

1 to comply with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by
2 entering false vehicle identification information or emissions control system identification into
3 the EIS on the 2000 Toyota, referenced in paragraph 37.

4 a. **Section 44014:** Respondent N. Dias' employee was not properly licensed to
5 conduct inspections and was allowed to do so.

6 b. **Section 44032:** Respondent A. Diaz' employee failed to perform tests of the
7 emission control devices and systems on the 2000 Toyota in accordance with section 44012 of
8 that Code, in that person performing the inspection was unlicensed.

9 **THIRD CAUSE FOR DISCIPLINE**
10 **Smog Check Inspector License**
(Failure to Comply with Regulations)

11 40. Respondent A. Diaz has subjected his Smog Check Inspector License to discipline
12 under H & S Code section 44072.2, subdivision (c), in that Respondent A. Diaz failed to comply
13 with California Code of Regulations, Title 16, section 3340.41, subdivision (c), by entering a
14 user identification that was not his own in inspecting the 2000 Toyota referenced in paragraph
15 37, above.

16 a. **Section 44014 (a) :** Respondent A. Dias was not a licensed smog check
17 technician.

18 b. **Section 44032:** Respondent A. Diaz was not the designated qualified
19 smog check technician authorized to have access to the station's EIS.

20 **FOURTH CAUSE FOR DISCIPLINE**
21 **Smog Check Inspector License**
(Failure to Comply with Code Regulations)

22 41. Respondent A. Diaz has subjected his Smog Check Inspector License to discipline
23 under Code section 119 subsection (c) in that Respondent A. Diaz failed used an identification
24 or license that was his own by when accessing the EIS machine to inspect the 2000 Toyota
25 referenced in paragraph 37, above.

26 ///

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **Smog Check Inspector License**
3 **(Violations of Regulations)**

4 42. Respondent A. Diaz has subjected his Smog Check Inspector License to discipline
5 under Health and Safety Code section 44072.2, subdivision (c), in that on May 9, 2014, as
6 referenced in paragraph 37, above, he violated sections of the California Code of Regulations,
7 Title 16, as follows:

8 a. **Section 3340.30, subdivision (d):** Respondent A. Diaz conducted a smog
9 inspection on a 2000 Toyota as the designated licensed smog check inspector when he was in
10 fact not properly licensed.

11 b. **Section 3340.31, subdivision (b):** Respondent A. Diaz conducted a smog
12 inspection on a 2000 Toyota and under the smog check inspector license of another individual.

13 c. **Section 3340.35, subdivision (d):** Respondent A. Diaz conducted a smog
14 inspection on a 2000 Toyota and issued a valid certificate as the designated licensed smog check
15 inspector when he was in fact not properly licensed.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **Smog Check Inspector License**
18 **(Violations of Regulations)**

19 43. Respondent Roman has subjected his Smog Check Inspector License to discipline
20 under Health and Safety Code section 44072.2, subdivision (c), in that on May 9, 2014, as
21 referenced in paragraph 37, above, he violated sections of the California Code of Regulations,
22 Title 16, as follows:

23 a. **Section 3340.35, subdivision (d):** Respondent Roman did not maintain
24 security of his access code.

25 **PRAYER**

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

28 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
273691, issued to Nancy Dias, dba King Smog Test Only Center;

1 2. Revoking or suspending Smog Check-Test Only Station License Number TC 273691,
2 issued to Nancy Dias, dba King Smog Test Only Center;

3 3. Revoking or suspending STAR Certification issued to Nancy Dias, dba King Smog
4 Test Only Center;

5 4. Revoking or suspending Smog Check Inspector License Number EO 153340,
6 issued to Allen Diaz;

7 5. Revoking or suspending Smog Check Repair Technician Number EI 153340,
8 issued to Allen Diaz;

9 6. Revoking or suspending Smog Check Inspector License Number EO 635380,
10 issued to Jason Roman;

11 7. Ordering Nancy Dias to pay the Bureau of Automotive Repair the reasonable costs of
12 the investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

14 8. Ordering Allen Diaz to pay the Bureau of Automotive Repair the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;

17 9. Ordering Jason Roman to pay the Bureau of Automotive Repair the reasonable costs
18 of the investigation and enforcement of this case, pursuant to Business and Professions Code
19 section 125.3;

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

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

22
23 DATED: June 5, 2015



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

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