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

12 In the Matter of the Accusation Against:

13 **ALUM ROCK EVERYDAY SMOG**
14 **BELTRAN CISNEROS CRUZ, Owner**
15 **2149 Alum Rock Ave**
16 **San Jose, CA 95116**

17 **Automotive Repair Dealer Registration No**
18 **ARD 274747**
19 **Smog Check, Test Only Station License No.**
20 **TC 274747**

21 **GUSTAVO C. JIMENEZ**
22 **2634 Gassman Dr.**
23 **San Jose, CA 95121**

24 **Smog Check Inspector License EO 154823**
25 **Smog Check Repair Technician EI 154823**
26 **(Formerly Advanced Emission Specialist**
27 **Technician License EA 154823)**

28 Respondents.

Case No. 79/15-74

ACCUSATION

(SMOG CHECK)

Complainant alleges:

PARTIES

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

1 "A registration that is not renewed within three years following its expiration shall not be
2 renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled
3 immediately upon expiration of the three-year period.

4 "An automotive repair dealer whose registration has been canceled by operation of this
5 section shall obtain a new registration only if he or she again meets the requirements set forth in
6 this chapter relating to registration, is not subject to denial under Section 480, and pays the
7 applicable fees.

8 "An expired registration may be renewed at any time within three years after its expiration
9 upon the filing of an application for renewal on a form prescribed by the bureau and the payment
10 of all accrued renewal and delinquency fees. Renewal under this section shall be effective on the
11 date on which the application is filed and all renewal and delinquency fees are paid. If so
12 renewed, the registration shall continue in effect through the expiration date of the current
13 registration year as provided in Section 9884.3, at which time the registration shall be subject to
14 renewal."

15 7. Section 9884.7 of the Business and Professions Code states:

16 "(a) The director, where the automotive repair dealer cannot show there was a bona fide
17 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
18 dealer for any of the following acts or omissions related to the conduct of the business of the
19 automotive repair dealer, which are done by the automotive repair dealer or any automotive
20 technician, employee, partner, officer, or member of the automotive repair dealer.

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

24 ...

25 (4) Any other conduct that constitutes fraud.

26 ...

27 "(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on
28 probation the registration for all places of business operated in this state by an automotive repair

1 dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated
2 and willful violations of this chapter, or regulations adopted pursuant to it."

3 8. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration
6 temporarily or permanently.

7 9. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
8 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
9 the Motor Vehicle Inspection Program.

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

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

14 ..."

15 11. Section 44072.2 of the Health and Safety Code states:

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

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

22 ...

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

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

25 ...

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

28

1 is considered is when an inspector does not have an FPR score, either because that inspector is a
2 new licensee or does not have enough data to establish an FPR score.

3 17. Respondent Jimenez is not a STAR Smog Check Inspector. His FPR performance
4 rating as of July 2014 is 0.18. A performance rating of 0.40 or better is needed to be a STAR
5 Smog Check Inspector. Respondent Jimenez is not authorized to perform smog inspections at
6 Respondent Alum Rock's station.

7 18. Each licensed Smog Check Inspector is issued a unique access code allowing access
8 to the Emissions Inspection System (EIS), the equipment used to perform a smog check. This
9 access code is assigned by the Bureau of Automotive Repair. Each Smog Check Inspector must
10 maintain the security of his of her access code. Disclosure of one's code or use of another Smog
11 Check Inspector 's access code or license information is prohibited.

12 19. On May 16, 2014, The Bureau of Automotive Repair conducted an undercover
13 investigation of Respondent Alum Rock. The undercover investigation revealed that Respondent
14 Jimenez was performing smog inspections at Respondent Alum Rock's facility. Respondent
15 Jimenez performed the smog inspections at Respondent Alum Rock by using the access code of
16 another licensed Smog Check Inspector.

17 20. Respondent Jimenez forged the signature of the other licensed Smog Check Inspector
18 on the Vehicle Inspection Reports. Respondent Jimenez falsely certified under penalty of perjury
19 that the smog inspections were performed by another smog inspector.

20 21. Respondent Jimenez performed smog inspections on a 2000 Saturn LS, license plate
21 number 5DOY043, and a 1999 Dodge Durango, license plate number 6ERS107, at Respondent
22 Alum Rock's smog check station. Respondent Jimenez performed smog inspections using the
23 identity of another Smog Check Inspector. Respondent Alum Rock issued certificate of
24 compliance number PG764412 to the 1999 Dodge Durango. Among other things, such actions
25 deprived the people of California of the legitimacy of the Motor Vehicle Inspection Program.

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28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Fraud, Dishonesty, or Deceit)

3 22. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
4 licenses are subject to disciplinary action under section 44072.2, subsection (d), of the Health and
5 Safety Code in that he committed acts involving dishonesty, fraud, or deceit whereby another is
6 injured. The circumstances are described in paragraphs 15-21, above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Violation of Regulations)

9 23. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
10 licenses are subject to disciplinary action under section 44072.2, subsection (a), of the Health and
11 Safety Code in that he violated a regulation adopted by the director of the Department of
12 Consumer Affairs. Respondent Jimenez violated California Code of Regulations, title 16, section
13 3340.41 subsection (b) by entering the access code of another technician into an EIS. The
14 circumstances are further described in paragraphs, 15-21, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Violation of Chapter)

17 24. Respondent Jimenez's Smog Check Inspector and Smog Check Repair Technician
18 licenses are subject to disciplinary action under section 44072.2, subsection (c), of the Health and
19 Safety Code in that he violated a section of the Motor Vehicle Inspection Program. Respondent
20 Jimenez violated Health and Safety Code section 44014. Respondent Jimenez performed smog
21 inspections at Respondent Alum Rock's station. Respondent Jimenez was not qualified nor
22 authorized to perform smog inspections at Respondent Alum Rock's station. The circumstances
23 are further described in Paragraphs 15-21, above

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Misleading/Untrue Statements)

26 25. Respondent Alum Rock's ARD Registration is subject to disciplinary action under
27 section 9884.7, subsection (a)(1), of the Business and Professions Code in that Respondent Alum
28 Rock made or authorized statements that were untrue or misleading, and which Respondent Alum

1 Rock knew or should have known were untrue or misleading. Respondent Alum Rock issued
2 certificate of compliance number PG764412 to the 1999 Dodge Durango. This certificate falsely
3 states that the smog inspection was performed by one smog inspector when in fact it was
4 performed by another inspector. Respondent Alum Rock issued Vehicle Inspection Reports to
5 both the 1999 Dodge Durango and 2000 Saturn LS. The vehicle inspection reports falsely state
6 that the smog inspections were performed by one smog inspector when in fact they were
7 performed by another inspector. The circumstances are further described in paragraphs 15-21,
8 above.

9 **FIFTH CAUSE FOR DISCIPLINE**

10 (Fraud)

11 26. Respondent Alum Rock's ARD Registration is subject to disciplinary action under
12 section 9884.7, subsection (a)(4), of the Business and Professions Code in that Respondent Alum
13 Rock committed acts that constitute fraud. The circumstances are described in paragraphs 15-21,
14 and 25, above.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 (Fraud, Dishonesty, or Deceit)

17 27. Respondent Alum Rock's station license subject to disciplinary action under section
18 44072.2, subsection (d), of the Health and Safety Code in that it committed acts involving
19 dishonesty, fraud, or deceit whereby another is injured. The circumstances are described in
20 paragraphs 15-21, and 25, above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 (Violation of Chapter)

23 28. Respondent Alum Rock's station license is subject to disciplinary action under
24 section 44072.2, subsection (c), of the Health and Safety Code in that it violated a section of the
25 Motor Vehicle Inspection Program. Respondent Alum Rock violated Health and Safety Code
26 section 44014. Respondent Alum Rock performed smog inspections with a smog inspector who
27 was not qualified nor authorized to perform inspections at Respondent Alum Rock. The
28 circumstances are further described in Paragraphs 15-21 and 25, above.

1 OTHER MATTERS

2 29. Pursuant to Health & Safety Code section 44072.8, if Respondent Jimenez's Smog
3 Check Inspector License or Smog Check Repair Technician License is revoked or suspended, any
4 additional license issued under this chapter in the name of said licensee may be likewise revoked
5 or suspended by the director.

6 30. Pursuant to Health & Safety Code section 44072.8, if Respondent Alum Rock's Smog
7 Station License is revoked or suspended, any additional license issued under this chapter in the
8 name of said licensee may be likewise revoked or suspended by the director.

9 PRAYER

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

- 12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 274747, issued to Alum Rock Everyday Smog, Beltran Cisneros Cruz- Owner;
- 14 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
15 274747, issued to Alum Rock Everyday Smog, Beltran Cisneros Cruz- Owner;
- 16 3. Revoking or suspending Smog Check Inspector License EO 154823, issued to
17 Gustavo C. Jimenez;
- 18 4. Revoking or suspending Smog Check Repair Technician License EI 154823, issued to
19 Gustavo C. Jimenez;
- 20 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
21 and Safety Code in the name of Gustavo C. Jimenez;
- 22 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
23 and Safety Code in the name of Alum Rock Everyday Smog or Beltran Cisneros Cruz;
- 24 7. Ordering Alum Rock Everyday Smog, Beltran Cisneros Cruz- Owner to pay the
25 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
26 case, pursuant to Business and Professions Code section 125.3;

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1 8. Ordering Gustavo C. Jimenez to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
3 section 125.3;

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

5
6 DATED: November 7, 2014 

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

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