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

In the Matter of the Accusation Against: **ROMEIL GROUP LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare, Members, dba A STREET SMOG CHECK HAYWARD** **335 West A Street** **Hayward, California 94541** **6167 Jarvis Avenue, #204** **Newark, CA 94560** **Automotive Repair Dealer Registration No. 279148** **Smog Check, Test Only, Station License No. TC 279148** Respondent.	Case No. 79/16-145 **A C C U S A T I O N**

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.

2. On or about February 2, 2015, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 279148 to Romeil Group, LLC, Sameer Balkrishna

Tivare, Member; Priya Sameer Tivare, Member, dba A Street Smog Check Hayward ("Respondent") The Automotive Repair Dealer Registration was in full force and effect at all time relevant to the charges brought in this Accusation and will expire on February 28, 2017, unless renewed.

3. On or about May 14, 2015, the Bureau of Automotive Repair issued Smog Check, Test Only Station License Number TC 279148 to Romeil Group, LLC, Sameer Balkrishna Tivare, Member; Priya Sameer Tivare, Member, dba A Street Smog Check Hayward ("Respondent") The Smog Check, Test Only License was in full force and effect at all time relevant to the charges brought in this Accusation and will expire on February 28, 2017, unless renewed.

JURISDICTION

4. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

5. Business and Professions Code ("Code") section 118, subdivision (b), provides that the expiration of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

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

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

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

10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with any investigation of, or action or disciplinary proceedings against the licensee, or to render a decision suspending or revoking the license.

STATUTORY/REGULATORY PROVISIONS

11. 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.

. . . .

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

12. Section 44072.2 of the Health and Safety Code states, in pertinent part:

"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 Saf. Code, § 44000, et seq.)] and the regulations adopted pursuant to it, which related to the licensed activities.

. . . .

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

13. Section 44032 of the Health and Safety Code states:

"No person shall perform, for compensation, tests or repairs of emission control devices or systems of motor vehicles required by this chapter unless the 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 technicians shall perform tests of emission control devices and systems in accordance with Section 44012."

14. Section 44012 of the Health and Safety Code states, in pertinent part:

"The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas, and shall ensure all of the following:

. . . .

"(f) A visual or functional check is made of emission control devices specified by the 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."

15. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

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

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

. . .

"(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.

The OBD test failure criteria are specified in section 3340.42.2.

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

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

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

16. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

"A smog check technician shall comply with the following requirements at all times while licensed.

"(a) A licensed technician shall inspect, test and repair vehicles in accordance with section 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this article."

COST RECOVERY

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

FACTUAL ALLEGATIONS

18. On October 19, 2015, Bureau representative Christopher Cummings reviewed the OIS smog data for vehicles inspected by Mark Thomas Espinoza and certified by A Street Smog Check Hayward, for the period between June 3, 2015 and February 9, 2016. During Cummings' investigation, he accessed the VID, and performed a focused review of BAR-OIS test data for A Street Smog Check Hayward. BAR-OIS test data is the OBD ("On Board Diagnostics System") information transmitted during a smog inspection from the computer of the vehicle being

inspected to the BAR-OIS. Beginning March 9, 2015, California's Smog Check Program was updated and now requires smog inspectors and stations to use the BAR-OIS computer system during smog inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and most 1998 and new diesel vehicles. The BAR-OIS consists of a BAR-certified Data Acquisition Device ("DAD"), computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic ("OBD") scan tool. The DAD is an interface box that connects the computer containing the BAR-OIS software to the diagnostic link connector ("DLC") of the vehicle being inspected. When requested by the BAR-OIS software, the DAD retrieves data from the vehicle's on-board computer system ("OBD II").

19. The information obtained by the BAR-OIS software during a smog inspection is organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details, OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of Cummings' investigation of Respondent, he focused on information in the "Vehicle" and "OBDII Details" blocks because they contain a unique combination of information for the vehicle being inspected and "like vehicles" inspected. Like vehicles are vehicles of the same manufacturer, model, and model year that were inspected on the BAR-OIS. The unique combination of information analyzed by Rodriguez includes the eVIN ("Electronic Vehicle Identification Number"), PID ("Parameter Identification") count, and communication protocol. Rodriguez compared the eVIN, communication protocol, and PID count for a vehicle that was certified to like vehicles.

20. Cummings identified eleven vehicles certified by Respondents A Street Smog Check Hayward and Mark Thomas Espinoza's inspection either differed from the OIS data the vehicles transmitted during other inspections, or the data was inconsistent with the OIS data transmitted by "like vehicles" inspected or both.

21. Cummings' review of the BAR-OIS data for the vehicles certified by Respondents A Street Smog Check Hayward and Mark Thomas Espinoza during the above-referenced time

period revealed a pattern of fraudulent smog inspections that resulted in the issuance of fraudulent certificates of compliance. There were eleven instances in which Respondent Mark Thomas Espinoza certified vehicles that were not connected to the DAD when they were certified. Respondent Mark Thomas Espinoza therefore clean plugged eleven vehicles, resulting in Respondent A Street Smog Check Hayward issuing eleven fraudulent Certificate of Compliance between June 3, 2015 and February 9, 2015. The details of each instance of clean plugging is as follows:

22. **Clean Plug Number 1:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on June 3, 2015, Respondent Mark Thomas Espinoza inspected a 2008 Dodge Sprinter 3500 and A Street Smog Check Hayward issued smog Certificate of Compliance #YR526540C. The OIS Test Details for the 2008 Dodge Sprinter 3500 shows no eVIN reported, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2008 Dodge Sprinter 3500 vehicles report the correct eVIN, have an expected communication protocol of ICAN11bt5, and an expected PID count of 32.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2008 Dodge Sprinter 3500 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

23. **Clean Plug Number 2:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on September 8, 2015, Respondent Mark Thomas Espinoza inspected a 2003 Chrysler Sebring Limited and A Street Smog Check Hayward issued smog Certificate of Compliance #PW124691C. The OIS Test Details for the 2003 Chrysler Sebring Limited shows no eVIN reported, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2003 Chrysler Sebring Limited vehicles report no eVIN, have an expected communication protocol of JVPW, and an expected PID count of 22/3.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2008 Dodge Sprinter 3500 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

24. **Clean Plug Number 3:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on September 15, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Ford Mustang and A Street Smog Check Hayward issued smog Certificate of Compliance #PW333985C. The OIS Test Details for the 2000 Ford Mustang shows no eVIN reported, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2000 Ford Mustang vehicles report no eVIN, have an expected communication protocol of JPWM, and an expected PID count of 20 or 21.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2000 Ford Mustang being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

25. **Clean Plug Number 4:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on September 29, 2015, Respondent Mark Thomas Espinoza inspected a 2004 Cadillac Deville and A Street Smog Check Hayward issued smog Certificate of Compliance #PW897153C. The OIS Test Details for the 2004 Cadillac Deville shows no eVIN reported, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2004 Cadillac Deville vehicles report the correct eVIN, have an expected communication protocol of JVPW and an expected PID count of 23.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2004 Cadillac Deville being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

26. **Clean Plug Number 5:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on October 6, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Chevrolet Silverado

C1500 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY095319C. The OIS Test Details for the 2000 Chevrolet Silverado C1500 shows no eVIN reported, the communication protocol is listed as I9140808, and the PID count was 18. Comparative OIS Test data shows that similar 2000 Chevrolet Silverado C1500 vehicles report the correct eVIN, have an expected communication protocol of JVPW and an expected PID count of 22 or 23.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2000 Chevrolet Silverado C1500 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

27. **Clean Plug Number 6:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on October 6, 2015, Respondent Mark Thomas Espinoza inspected a 2004 Nissan Sentra 1.8/1.8S and A Street Smog Check Hayward issued smog Certificate of Compliance #PY095324C. The OIS Test Details for the 2004 Nissan Sentra 1.8/1.8S shows the eVIN as KNDJJ741X95029809, the communication protocol is listed as ICAN11bt500, and the PID count was 42. Comparative OIS Test data shows that similar 2004 Nissan Sentra 1.8/1.8S vehicles do not report an eVIN, have an expected communication protocol of I914 and an expected PID count of 18.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2004 Nissan Sentra 1.8/1.8S being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

28. **Clean Plug Number 7:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on October 20, 2015, Respondent Mark Thomas Espinoza inspected a 2006 Mercedes-Benz C230 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY415538C. The OIS Test Details for the 2006 Mercedes-Benz C230 shows no eVIN, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2006 Mercedes-Benz C230 vehicles report the correct eVIN, report an expected communication protocol of ICAN11bt5 and an expected PID count of 44.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2006 Mercedes-Benz C230 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

29. **Clean Plug Number 8:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on November 3, 2015, Respondent Mark Thomas Espinoza inspected a 2006 Mercedes-Benz ML350 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY837328C. The OIS Test Details for the 2006 Mercedes-Benz ML350 shows no eVIN, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2006 Mercedes-Benz ML350 vehicles report the correct eVIN, report an expected communication protocol of ICAN11bt5 and an expected PID count of 44.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2006 Mercedes-Benz ML350 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

30. **Clean Plug Number 9:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on November 24, 2015, Respondent Mark Thomas Espinoza inspected a 2008 Dodge Sprinter 2500 and A Street Smog Check Hayward issued smog Certificate of Compliance #QA389665C. The OIS Test Details for the 2008 Dodge Sprinter 2500 shows no eVIN, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2008 Dodge Sprinter 2500 vehicles report the correct eVIN, report an expected communication protocol of ICAN11bt5 and an expected PID count of 32.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2008 Dodge Sprinter 2500 being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

31. **Clean Plug Number 10:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on January 12 , 2016, Respondent Mark Thomas Espinoza inspected a 2009 Pontiac G6 GT and A

Street Smog Check Hayward issued smog Certificate of Compliance #YV732757C. The OIS Test Details for the 2009 Pontiac G6 GT shows no eVIN, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2009 Pontiac G6 GT vehicles report the correct eVIN, report an expected communication protocol of ICAN11bt5 and an expected PID count of 44/7.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2009 Pontiac G6 GT being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

32. **Clean Plug Number 11:**

a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on February 9 , 2016, Respondent Mark Thomas Espinoza inspected a 2006 Chevrolet Trailblazer EXT LS/LT and A Street Smog Check Hayward issued smog Certificate of Compliance #YX627656C. The OIS Test Details for the 2006 Chevrolet Trailblazer shows no eVIN, the communication protocol is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar 2006 Chevrolet Trailblazer EXT LS/LT vehicles report the correct eVIN, report an expected communication protocol of JVPW and an expected PID count of 19.

b. The discrepancies in the OIS Test Data establishes the OIS DAD was not connected to the 2009 Pontiac G6 GT being certified, resulting in the issuance of a fraudulent smog Certificate of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Making or Authorizing Untrue or Misleading Statements)

32. Respondent, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, doing business as A Street Smog Check Hayward, has subjected its Automotive Repair Dealer Registration and Smog Check Station License to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), in that it issued eleven fraudulent certificates of compliance and failed to comply with the Automotive Repair Act as set forth in paragraphs 20-32, above.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

33. Respondent, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, doing business as A Street Smog, has subjected its Automotive Repair Dealer Registration and Smog Check Station License to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), in that it issued two fraudulent certificates of compliance as set forth in paragraphs 20-32, above.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with the Automotive Repair Act)

34. Respondent, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, doing business as A Street Smog Check Hayward, has subjected its Automotive Repair Dealer Registration and Smog Check Station License to disciplinary action pursuant to Business and Professions Code section 9884.7, subdivision (a)(6) and Health and Safety Code section 44072.2, subdivisions (a) and (c), in that it failed to comply with the Automotive Repair Act and sections of the Code and applicable regulations as set forth in paragraphs 20-32, above. The violations are as follows:

a. **Health & Safety Code, section 44012, subdivision (f):** Respondent, A Street Smog Check Hayward, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, failed to follow test procedures in accordance with the OIS specifications when it failed to properly conduct the functional portion of the smog inspection by failing to connect eleven vehicles to the BAR-OIS when they were being certified.

b. **Health & Safety Code, section 44032:** Respondent, A Street Smog Check Hayward, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, failed to ensure that the emission control tests were performed in accordance with the procedures prescribed by the department.

c. **Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent, A Street Smog Check Hayward, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, failed to inspect and test a vehicle in accordance with Health & Safety Code sections 44012.

d. Cal. Code Regs., tit. 16, section 3340.35, subdivision (c): Respondent, A Street Smog Check Hayward, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, falsely or fraudulently issued certificates of compliance for eleven vehicles that had not been inspected in accordance with the procedures specified in Cal. Code Regs., tit. 16, section 3340.42.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud, Deceit)

35. Respondent, A Street Smog, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners, has subjected its Automotive Repair Dealer Registration and Smog Check Station License to disciplinary action pursuant to Health and Safety Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty, fraud or deceit, whereby another was injured, by issuing eleven fraudulent certificates of compliance as set forth in paragraphs 20-32, above.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 279148, issued to Romeil Group LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare, Members, dba A Street Smog Check Hayward;

2. Revoking or suspending Smog Check, Test Only, Station License Number TC 279148, issued to Romeil Group LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare, Members, dba A Street Smog Check Hayward ;

3. Ordering Romeil Group LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare, Members, to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7-12-16

FOR

PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs

State of California
Complainant

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