

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

In the Matter of the Accusation Against:

**A STREET SMOG CHECK HAYWARD;
SAMEER BALKRISHNA TIVARE and
PRIYA TIVARE, members of ROMEIL
GROUP LLC, Owner,**

Automotive Repair Dealer Registration No.
279148

Smog Check, Test Only, Station License No. TC
279148

Respondents.

Case No. 79/16-145


OAH No. 2016080174

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective February 2, 2017.

DATED: 12/28/2016



RYAN MARCROFT
Assistant Chief Counsel
Division of Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

A STREET SMOG CHECK HAYWARD;
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Automotive Repair Dealer
Registration No. 279148

Smog Check, Test Only, Station
License No. TC 279148

Respondents.

Case No. 79/16-145

OAH No. 2016080174

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter on September 29, 2016, in Oakland, California.

Deputy Attorney General Kim M. Settles represented complainant Patrick Dorais, Chief of the Bureau of Automotive Repair.

Sameer B. Tivare represented A Street Smog Check Hayward and Priya Tivare and both were present throughout the administrative hearing.

The matter was submitted for decision on September 29, 2016.

FACTUAL FINDINGS

1. Patrick Dorais brought the accusation solely in his official capacity as the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2. On February 2, 2015, the Bureau 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 times relevant to the charges brought in the accusation and will expire on February 28, 2017, unless renewed.

3. On May 14, 2015, the Bureau 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 Station license was in full force and effect at all times relevant to the charges brought in the accusation and will expire on February 28, 2017, unless renewed.

4. It was stipulated by the parties that Respondent admits that the factual allegations relating to the factual description of eleven instances of clean plugging contained in paragraphs 18 – 32 of Accusation No. 79/16-145 are true. Respondent will not contest the factual allegations in the paragraphs referenced herein, at the administrative hearing. Respondent does not admit the charges and allegations contained in the first, second, third, and fourth causes for discipline as described in the remaining paragraphs of Accusation No. 79/16-145.

5. A brief summary of the clean plugging is set forth herein. The full factual findings are set forth in the paragraphs referred in Factual Finding 4, above, and incorporated by this reference as if fully set forth herein. 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. Cummings identified eleven vehicles certified by A Street Smog Check Hayward and Mark Thomas Espinoza's inspection that 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. There were 11 instances in which Mark Tomas Espinoza certified vehicles that were not connected to the Data Acquisition Device (DAD) when they were certified. Mark Thomas Espinoza therefore clean plugged 11 vehicles, resulting in A Street Smog Check Hayward issuing 11 fraudulent Certificates of Compliance between June 3, 2015, and February 9, 2015.

6. Mark Thomas Espinoza worked for A Street Smog Check Hayward one day a week. He was hired in May 2015. Respondent Sameer Tivare checked Mr. Espinoza's score with the Bureau and he had a good score. Mr. Espinoza was given a fixed salary with no incentive to do more smog checks. All the technicians were paid the same amount. Respondent Tivare monitored the technicians' score and their score as a business kept by BAR. The scores were always acceptable.

7. Respondent Tivare did not learn of the clean plugging until he received a call from the Deputy Attorney General that a hearing on an interim suspension order was set. Mr. Espinoza had hidden the ISO documents from respondent. Mr. Espinoza was terminated immediately.

8. The next day Mr. Tivare met with a Bureau representative to get recommendations to avoid this problem in the future. As a result of these recommendations, Mr. Tivare installed security cameras and hired a full-time manager as of August 1, 2016. The manager is on-site and has the responsibility to ensure that there is no clean plugging. There is currently one technician who has taken classes to get an additional certification to improve the quality of work and customer service.

9. Mr. Tivare was not present during any of the instances of clean plugging. He met with his employees to let them know that they will get caught and fired if there are any instances of clean plugging in the future.

10. Mr. Tivare feels he should not be essentially put out of business for one rogue employee. He cooperated fully with the Bureau. He monitors the cameras regularly and requires the manager to check for clean plugging.

11. While the Bureau argues for strict liability, it is not always appropriate. Mr. Tivare has learned a difficult lesson. It is extremely unlikely that anything like this will ever happen again under his watch. Mr. Espinoza actively hid his activities from Mr. Tivare.

Costs

12. The Bureau has incurred \$662 in investigative costs, and \$13,112.50 in legal costs, for a total of \$13,774.50 in costs of investigation and enforcement. There was no challenge to the reasonableness of these costs.

LEGAL CONCLUSIONS

Cause for Discipline

1. It is the smog check station, not the technician, that issues a smog certificate. (Health & Saf. Code, § 44010.) The law is clear that as the licensee, respondent A Street Smog Check Hayward, is responsible for any misconduct committed by its employee, Mark Thomas Espinoza. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295-297 [licensee, if he elects to operate his business through employees, must be responsible to the licensing authority for their conduct in the exercise of his license.] See also, *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 360; *Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793; *Camacho v. Youde* (1979) 95 Cal.App.3d 161.)

2. First Cause for Discipline (Untrue or Misleading Statements): Cause for discipline of the automotive repair dealer registration issued to A Street Smog Check Hayward, exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(1), for untrue or misleading statements made in the issuance of the electronic certificates of compliance certifying the certified vehicles were in compliance with applicable laws and

regulations, when in fact, the smog inspections were performed by using the clean plugging method.

3. Second Cause for Discipline (Fraud): Cause for discipline of the automotive repair dealer registration issued to A Street Smog Check Hayward, exists pursuant to Business and Professions Code section 9884.7, subdivision (a)(4), for fraud associated with its inspections and the issuance of the electronic certificates of compliance, without the performance of a bona fide smog inspection.

4. Third Cause for Discipline (Violations of the Motor Vehicle Inspection Program): Cause for discipline of the smog check test only station license issued to A Street Smog Check Hayward exists pursuant to Health and Safety Code section 44072.2, subdivision (a), in that in connection with its inspections and the issuance of the electronic certificates of compliance, it violated the following provisions of the Health and Safety Code pertaining to the Motor Vehicle Inspection Program by:

- a. Section 44012: failing to ensure that all emission control tests on the 11 vehicles identified in Factual Finding 5, above, were performed in accordance with Bureau procedures.
- b. Section 44015: issuing electronic certificates of compliance for the 11 vehicles identified in Factual Finding 5, above, without ensuring that the vehicles were properly tested and inspected to determine if they were in compliance with Health and Safety Code section 44012.

5. Fourth Cause for Discipline (Failure to Comply with Motor Vehicle Inspection Program Regulations): Cause for discipline of the smog check test only station license issued to A Street Smog Check Hayward exists pursuant to Health and Safety Code section 44072.2, subdivision (c), in that in connection with its inspections and the issuance of the electronic certificates of compliance, it violated the following provisions of California Code of Regulations, title 16, pertaining to the Motor Vehicle Inspection Program by:

- a. Section 3340.35, subdivision (c): issuing electronic certificates of compliance for the 11 vehicles identified in Factual Finding 5, above, although the vehicles had not been inspected in accordance with section 3340.42.
- b. Section 3340.42: failing to conduct required smog tests on the 11 vehicles identified in Factual Finding 5, above, in accordance with the Bureau's specifications.

6. Fifth Cause for Discipline (Dishonesty, Fraud or Deceit): Cause for discipline of the smog check test only station license issued to A Street Smog Check Hayward exists pursuant to Health and Safety Code section 44072.2, subdivision (d), for dishonesty, fraud or deceit because it inspected and issued the electronic certificates of compliance in connection

with the 11 vehicles identified in Factual Finding 5, above, without performing bona fide inspections of the emission control devices and systems on the vehicles.

Penalty

7. The Bureau's guidelines for disciplinary penalties (Cal. Code Regs., tit. 16, § 3395.4) have been considered in reaching the determination of the appropriate penalty.

A Street Smog Check Hayward's automotive repair dealer registration (No. ARD 279148) and its smog check, test only, station license (No. TC 279148) are also subject to discipline due to the misconduct by Mark Thomas Espinoza.

In the highly regulated field of smog inspections, a licensee must be watchful over his or her employees, and ready to discipline employees who are not following the rules. Respondent terminated the employee immediately upon learning of the violations. Sameer Tivare was not aware that Espinoza was issuing fraudulent certificates of compliance. Mr. Sameer Tivare was not as vigilant as he should have been. However, he has taken responsibility for the misconduct and taken steps to make sure it does not happen again, including hiring a manager and installing security cameras.

8. Under all the circumstances in this case, considering the facts in mitigation, it would not be against the public interest to allow respondent to keep his Automotive Repair Dealer Registration and his Smog Check, Test only, Station License under probationary conditions. (Findings 6 – 11)

Costs

9. Pursuant to Business and Professions Code section 125.3, the Bureau may request an administrative law judge to order a licensee found to have violated the licensing act to pay an amount that does not exceed the reasonable costs of investigation and enforcement. There was no objection to the reasonableness of the Bureau's costs of \$13,774.50. The investigation required a detailed review of many records and references. The enforcement of the matter was complex. The costs are reasonable. (Finding 12.)

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth guidelines for determining whether costs should be assessed in the particular circumstances of each case. The Bureau must consider whether to do so will unfairly penalize the licensee who has committed misconduct, but who has used the hearing process to obtain a dismissal or a reduction in the severity of the discipline imposed, as well as whether the licensee will be financially able to pay the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a licensee engaged in relatively innocuous misconduct. (*Id.*, at pp. 44-45.) Here, the misconduct committed was repetitive. No evidence of an inability to pay was submitted by respondents. There is no basis upon which to reduce the costs of investigation and enforcement of this matter.

ORDER

1. Automotive Repair Dealer Registration No. ARD 279148 issued to A Street Smog Check Hayward and Smog Check Test Only Station License No TC 279148 issued to A Street Smog Check Hayward, are revoked.

However, the revocation is stayed, and respondent is placed on probation for three (3) years, subject to the following terms and conditions:

- A. Respondent shall comply with all statutes, regulations and rules governing smog checks and automotive inspections, estimates and repairs.
- B. Respondent or respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.
- C. Within 30 days of the effective date of this action, respondent shall report any financial interest which any partners, officers, or owners of the respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.
- D. Respondent shall provide bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing smog checks and/or repairs, up to and including the point of completion.
- E. Respondent shall pay costs, in the amount of \$13,774.50, according to a payment schedule promulgated by the bureau, to be completed no later than 30 days prior to the expiration of probation.
- F. If an accusation is filed against respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

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- G. Should the Director of Consumer Affairs determine that respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard, temporarily or permanently invalidate the smog check license and/or the automotive repair dealer registration.

DATED: October 20, 2016

DocuSigned by:
Ruth S. Astle
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RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 79/16-145

13 **ROMEIL GROUP LLC, Owner; Sameer**
14 **Balkrishna Tivare and Priya Tivare,**
15 **Members, dba A STREET SMOG CHECK**
HAYWARD
16 **335 West A Street**
Hayward, California 94541

A C C U S A T I O N

17 **6167 Jarvis Avenue, #204**
Newark, CA 94560

18 **Automotive Repair Dealer Registration No.**
279148

19
20 **Smog Check, Test Only, Station License No.**
TC 279148

21 Respondent.
22

23 Complainant alleges:

24 **PARTIES**

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

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

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

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

11 JURISDICTION

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

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

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

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

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

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

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

9 **STATUTORY/REGULATORY PROVISIONS**

10 11. Section 9884.7 of the Code states:

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

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

19

20 (4) Any other conduct which constitutes fraud.

21

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

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

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

28 "(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health

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

3

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

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

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

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

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

16

17 "(f) A visual or functional check is made of emission control devices specified by the
18 department, including the catalytic converter in those instances in which the department
19 determines it to be necessary to meet the findings of Section 44001. The visual or functional
20 check shall be performed in accordance with procedures prescribed by the department."

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

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

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

26 ...

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

1 The OBD test failure criteria are specified in section 3340.42.2.

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

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

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

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

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

12 "(a) A licensed technician shall inspect, test and repair vehicles in accordance with section
13 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
14 3340.42 of this article.”

15 COST RECOVERY

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

22 FACTUAL ALLEGATIONS

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

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

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

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

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

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

8 **22. Clean Plug Number 1:**

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

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

19 **23. Clean Plug Number 2:**

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

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

4 **24. Clean Plug Number 3:**

5 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
6 September 15, 2015, Respondent Mark Thomas Espinoza inspected a 2000 Ford Mustang and A
7 Street Smog Check Hayward issued smog Certificate of Compliance #PW333985C. The OIS
8 Test Details for the 2000 Ford Mustang shows no eVIN reported, the communication protocol is
9 listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
10 2000 Ford Mustang vehicles report no eVIN, have an expected communication protocol of
11 JPWM, and an expected PID count of 20 or 21.

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

15 **25. Clean Plug Number 4:**

16 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
17 September 29, 2015, Respondent Mark Thomas Espinoza inspected a 2004 Cadillac Deville and
18 A Street Smog Check Hayward issued smog Certificate of Compliance #PW897153C. The OIS
19 Test Details for the 2004 Cadillac Deville shows no eVIN reported, the communication protocol
20 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
21 2004 Cadillac Deville vehicles report the correct eVIN, have an expected communication
22 protocol of JVPW and an expected PID count of 23.

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

26 **26. Clean Plug Number 5:**

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

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

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

9 **27. Clean Plug Number 6:**

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

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

20 **28. Clean Plug Number 7:**

21 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
22 October 20, 2015, Respondent Mark Thomas Espinoza inspected a 2006 Mercedes-Benz C230
23 and A Street Smog Check Hayward issued smog Certificate of Compliance #PY415538C. The
24 OIS Test Details for the 2006 Mercedes-Benz C230 shows no eVIN, the communication protocol
25 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
26 2006 Mercedes-Benz C230 vehicles report the correct eVIN, report an expected communication
27 protocol of ICAN11bt5 and an expected PID count of 44.

28

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

4 **29. Clean Plug Number 8:**

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

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

15 **30. Clean Plug Number 9:**

16 a. Cummings review of the OIS Test Data contained in the BAR's VID indicates that on
17 November 24, 2015, Respondent Mark Thomas Espinoza inspected a 2008 Dodge Sprinter 2500
18 and A Street Smog Check Hayward issued smog Certificate of Compliance #QA389665C. The
19 OIS Test Details for the 2008 Dodge Sprinter 2500 shows no eVIN, the communication protocol
20 is listed as I9140808, and the PID count was 17. Comparative OIS Test data shows that similar
21 2008 Dodge Sprinter 2500 vehicles report the correct eVIN, report an expected communication
22 protocol of ICAN11bt5 and an expected PID count of 32.

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

26 **31. Clean Plug Number 10:**

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

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

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

9 **32. Clean Plug Number 11:**

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

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Making or Authorizing Untrue or Misleading Statements)**

22 32. Respondent, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners,
23 doing business as A Street Smog Check Hayward, has subjected its Automotive Repair Dealer
24 Registration and Smog Check Station License to disciplinary action pursuant to Business and
25 Professions Code section 9884.7, subdivision (a)(1), in that it issued eleven fraudulent certificates
26 of compliance and failed to comply with the Automotive Repair Act as set forth in paragraphs 20-
27 32, above.

28 **SECOND CAUSE FOR DISCIPLINE**

1 (Fraud)

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

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with the Automotive Repair Act)**

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

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

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

25 c. **Cal. Code Regs., tit. 16, section 3340.30, subdivision (a):** Respondent, A Street
26 Smog Check Hayward, Romeil Group, LLC, owner, Sameer Tivare and Priya Tivare, partners,
27 failed to inspect and test a vehicle in accordance with Health & Safety Code sections 44012.
28

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

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Dishonesty, Fraud, Deceit)**

7 35. Respondent, A Street Smog, Romeil Group, LLC, owner, Sameer Tivare and Priya
8 Tivare, partners, has subjected its Automotive Repair Dealer Registration and Smog Check
9 Station License to disciplinary action pursuant to Health and Safety Code section 44072.2,
10 subdivision (d), in that it committed acts involving dishonesty, fraud or deceit, whereby another
11 was injured, by issuing eleven fraudulent certificates of compliance as set forth in paragraphs 20-
12 32, above.

13 **PRAYER**

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


16 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
17 279148, issued to Romeil Group LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare,
18 Members, dba A Street Smog Check Hayward;

19 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
20 279148, issued to Romeil Group LLC, Owner; Sameer Balkrishna Tivare and Priya Tivare,
21 Members, dba A Street Smog Check Hayward ;

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

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

26 DATED: 7-12-16

27 
28 PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs