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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. 79/21-10764

14 **KEVIN GEOVANY SANDOVAL DBA**
CHEVY BOYS SMOG CHECK
15 **8220 Foothill Blvd. Unit #5**
Sunland, CA 91040

ACCUSATION

16 **Automotive Repair Dealer Registration No.**
17 **ARD 297756**
Smog Check, Test Only Station License No.
18 **TC 297756**

19 **and**

20 **KEVIN GEOVANY SANDOVAL**
12020 Vanowen St., Apt. 12
21 **North Hollywood, CA 91605**

22 **Smog Check Inspector License No.**
23 **EO 642853**

24 Respondent.
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1 **PARTIES**

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

4 2. On or about August 6, 2020, the Bureau of Automotive Repair issued Automotive
5 Repair Dealer Registration Number ARD 297756 to Kevin Geovany Sandoval dba Chevy Boys
6 Smog Check (Respondent). The Automotive Repair Dealer Registration was in full force and
7 effect at all times relevant to the charges brought herein and will expire on August 31, 2022,
8 unless renewed.

9 3. On or about March 3, 2021, the Bureau of Automotive Repair issued Smog Check,
10 Test Only Station License Number TC 297756 to Kevin Geovany Sandoval dba Chevy Boys
11 Smog Check (Respondent). The Smog Check, Test Only Station License was in full force and
12 effect at all times relevant to the charges brought herein and will expire on August 31, 2022,
13 unless renewed.

14 4. On or about April 14, 2021, Kevin Geovany Sandoval dba Chevy Boys Smog Check
15 a was certified as a STAR Station. This certification will remain unless the Automotive Repair
16 Dealer Registration and/or Smog Check Station License is revoked, canceled, licenses become
17 delinquent, or the certification is invalidated.

18 5. On or about January 19, 2021, the Bureau of Automotive Repair issued Smog Check
19 Inspector License Number EO 642853 to Kevin Geovany Sandoval (Respondent). The Smog
20 Check Inspector License was in full force and effect at all times relevant to the charges brought
21 herein and will expire on November 30, 2022, unless renewed.

22 **JURISDICTION**

23 6. Business and Professions Code (Bus. & Prof. Code) section 118, subdivision (b),
24 provides that suspension, expiration, surrender, or cancellation of a license shall not deprive the
25 Director of jurisdiction to proceed with a disciplinary action during the period within which the
26 license may be renewed, restored, reissued or reinstated.

27 7. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an
28 automotive repair dealer registration.

8. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision temporarily or permanently invalidating (suspending or revoking) a registration.

9. Health and Safety Code (Health & Saf. Code) section 44002 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. Health & Saf. Code section 44072.6 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 disciplinary action.

STATUTORY 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. Bus. & Prof. Code section 477 provides, in pertinent part, that “Board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” “License” includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

1 13. Section 44012 of the Health & Saf. Code provides, in pertinent part, that tests at smog
2 check stations shall be performed in accordance with procedures prescribed by the department.

3 14. Section 44015, subdivision (b), of the Health & Saf. Code provides that a certificate
4 of compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
5 40012.

6 15. Section 44032 of the Health & Saf. Code provides that qualified technicians shall
7 perform tests of emissions control devices and systems in accordance with Health & Saf. Code
8 section 40012.

9 16. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

14

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

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

18 17. Health & Saf. Code section 44072.10 states, in pertinent part:

19

20 (c) The department shall revoke the license of any smog check technician or
21 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
22 the following:

23

24 (4) Intentional or willful violation of this chapter or any regulation, standard, or
procedure of the department implementing this chapter . . .

25 18. Health & Saf. Code section 44072.8 states that when a license has been revoked or
26 suspended following a hearing under this article, any additional license issued under this chapter
27 in the name of the licensee may be likewise revoked or suspended by the director.
28

REGULATORY PROVISIONS

19. California Code of Regulations, title 16, section 3340.30, states:

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.

20. California Code of Regulations, title 16, section 3340.35, states:

....

(c) A licensed station shall issue a certificate of compliance or noncompliance to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly. The following conditions shall apply:

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

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

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

....

(c) No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data 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 vehicle being tested.

22. California Code of Regulations, title 16, section 3340.42, sets forth specific emissions test methods and procedures which apply to all vehicles inspected in the State of California. Smog check inspection methods are prescribed in the Smog Check Manual, referenced by section 3340.45.

23. California Code of Regulations, title 16, section 3371, states:

No dealer shall publish, utter, or make or cause to be published, uttered, or made any false or misleading statement or advertisement which is known to be false or misleading, or which by the exercise of reasonable care should be known to be false or misleading.

....

24. California Code of Regulations, title 16, section 3373, states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where

1 the tendency or effect thereby would be to mislead or deceive customers, prospective
2 customers, or the public.

3 **COST RECOVERY**

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

10 **FACTUAL ALLEGATIONS**

11 26. The Bureau has become aware of certain methods that some Smog Check stations
12 and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not or
13 will not pass a Smog Check test on their own, or in some instances, are not even present during
14 the time the test is performed. "Clean tanking" is one such method, during which the Low
15 Pressure Fuel Evaporative Test (LPFET) is performed using the LPFET equipment calibration
16 tank instead of connecting to the subject vehicle's fuel inlet to determine if there is a leak in the
17 system. The LPFET tests the functionality of the vehicle's Evaporative Emissions Control
18 (EVAP) system by introducing inert Nitrogen gas into the vehicle's fuel system, which includes
19 the fuel tank, until it reaches a predetermined pressure and then holds that pressure for a specified
20 period of time to confirm no leaks are present in the system. As part of this test, the LPFET
21 equipment measures the "headspace volume" based upon the volume of gas needed to achieve a
22 specified pressure as the Nitrogen gas is introduced into the vehicle's fuel tank, and records that
23 data to the Vehicle Information Database (VID). The "headspace volume" is the volume of the
24 vapor space in the fuel tank above the fuel level. This means a vehicle with a full tank of gas will
25 have a smaller headspace volume than a vehicle with less fuel in the tank. The LPFET equipment
26 must pass a calibration test every 3 days to verify its ability to properly measure the volume of
27 Nitrogen gas introduced during a test and the pressure readings. In order to pass the calibration
28 test, the amount of Nitrogen gas introduced to the calibration tank during the test must be within

the 1.5 to 2.5 gallon headspace volume range. If the LPFET equipment fails a calibration test, the LPFET tester is locked and the station is not able to perform the LPFET test until the unit passes.

27. On August 20, 2021, the Bureau conducted a review of Chevy Boys Smog Check's BAR-97 Smog Check inspection records from the VID for vehicles that received an LPFET test during the period of April 28, 2021 through July 31, 2021. The review showed a total of 23 LPFET tests passed. Of those 23 LPFET tests, 91.30% had a calculated headspace volume within the 1.5 to 2.5 gallon range, the same range the LPFET calibration tank is required to maintain, resulting in 21 possible fraudulent certifications issued by Chevy Boys Smog Check. VID data show that of certified vehicles statewide that received an LPFET test during the same period of time [109,717 inspections from 4,295 stations], just 16.04% reported a calculated headspace volume within the 1.5 to 2.5 gallon range. After adjusting for the statewide percentage of expected headspace volume results in this range, the data shows that Chevy Boys Smog Check issued 17 fraudulent certifications utilizing the clean tanking method.

28. Of the 23 vehicles certified by Chevy Boys Smog Check with passing LPFET inspections between April 28, 2021 through July 31, 2021. Respondent performed 23, with 91.30% reporting calculated headspace volumes within the 1.5 to 2.5 gallon range, resulting in 21 possible fraudulent certifications. After adjusting for the statewide percentage of expected headspace volume results in this range (16.04%) the data show that Respondent issued 17 fraudulent certifications utilizing the clean tanking method.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements)

29. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that between April 28, 2021 through July 31, 2021, Respondent made or authorized statements which it knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: From April 28, 2021 through July 31, 2021, Respondent issued 17 fraudulent certificates of compliance to vehicles using the calibration tank or a tank other than the actual vehicles' fuel tank during the LPFET portion of the smog inspection. Complainant refers to, and by this reference

1 incorporates, the allegations contained in paragraphs 26 through 28, above, as though set forth
2 fully herein.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 30. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action
6 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he committed acts that
7 constitute fraud by issuing electronic certificates of compliance for 17 vehicles, as described
8 above in paragraph 28, without performing bone fide inspections of the emission control devices
9 and systems on those vehicles, thereby depriving the People of the State of California of the
10 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
11 reference incorporates, the allegations contained in paragraphs 26 through 28 above, as though set
12 forth fully herein.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Material Violation of Automotive Repair Act)**

15 31. Respondent's Automotive Repair Dealer Registration is subject to disciplinary action
16 pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he failed in a material
17 respect to comply with the provisions of this chapter or regulations adopted pursuant to it when
18 he issued electronic certificates of compliance for 17 vehicles, as described above in paragraph
19 28, without performing bona fide inspections of the emission control devices and systems on
20 those vehicles, thereby depriving the People of the State of California of the protection afforded
21 by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
22 incorporates, the allegations contained in paragraphs 26 through 28, above, as though set forth
23 fully herein.

1 **FOURTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent's Smog Check Test Only Station License is subject to disciplinary action
4 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
5 the following sections of that Code:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on 17 vehicles, as described in paragraph 28 above, in accordance with procedures
8 prescribed by the department.

9 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
10 compliance for 17 vehicles, as described in paragraph 28 above, without ensuring that the
11 vehicles were properly tested and inspected to determine if they were in compliance with Health
12 & Saf. Code section 44012.

13 Complainant refers to, and by this reference incorporates, the allegations contained in
14 paragraphs 26 through 28, above, as though set forth fully herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Comply with Regulations Pursuant**
17 **to the Motor Vehicle Inspection Program)**

18 33. Respondent's Smog Check Test Only Station License is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
20 provisions of California Code of Regulations, title 16, as follows:

21 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
22 electronic smog certificates of compliance for 17 vehicles as described in paragraph 28 above.

23 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 17 vehicles,
24 as described in paragraph 28 above, in accordance with Health & Saf. Code sections 44012 and
25 44035, and California Code of Regulations, title 16, section 3340.42.

26 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
27 compliance for 17 vehicles, as described in paragraph 28 above, even though those vehicles had
28 not been inspected in accordance with section 3340.42.

1 d. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
2 into the emissions inspection system for 17 vehicles as described in paragraph 28 above.

3 e. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
4 on 17 vehicles, as described in paragraph 28 above, were done in accordance with the Bureau's
5 specifications.

6 Complainant refers to, and by this reference incorporates, the allegations contained in
7 paragraphs 26 through 28, above, as though set forth fully herein.

8 **SIXTH CAUSE FOR DISCIPLINE**

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

10 34. Respondent's Smog Check Test Only Station License is subject to disciplinary action
11 pursuant to Health & Saf. Code section 44072.2, subdivision (d), and Health & Saf. Code section
12 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby
13 another was injured by issuing electronic smog certificates of compliance for 17 vehicles, as
14 described in paragraph 28 above, without performing bona fide inspections of the emission
15 control devices and systems on the vehicles, thereby depriving the People of the State of
16 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
17 refers to, and by this reference incorporates, the allegations contained in paragraphs 26 through
18 28, above, as though set forth fully herein.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 35. Respondent's Smog Check Inspector License is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
23 the following sections of that code:

24 a. **Section 44032:** Respondent failed to ensure that the emission control tests were
25 performed on 17 vehicles, as described in paragraph 28 above, in accordance with Health & Saf.
26 Code section 44012.

27 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
28 compliance for 17 vehicles, as described in paragraph 28 above, without ensuring that the

1 vehicles were properly tested and inspected to determine if they were in compliance with Health
2 & Saf. Code section 44012.

3 Complainant refers to, and by this reference incorporates, the allegations contained in
4 paragraphs 26 through 28, above, as though set forth fully herein.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Regulations Pursuant**
7 **to the Motor Vehicle Inspection Program)**

8 36. Respondent's Smog Check Inspector License is subject to disciplinary action
9 pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he failed to comply with
10 provisions of California Code of Regulations, title 16, as follows:

- 11 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
12 electronic smog certificates of compliance for 17 vehicles as described in paragraph 28 above.
- 13 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test 17 vehicles,
14 as described in paragraph 28 above, in accordance with Health & Saf. Code sections 44012 and
15 44035, and California Code of Regulations, title 16, section 3340.42.
- 16 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
17 into the emissions inspection system for 17 vehicles as described in paragraph 28 above.
- 18 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
19 on 17 vehicles, as described in paragraph 28 above, were done in accordance with the Bureau's
20 specifications.

21 Complainant refers to, and by this reference incorporates, the allegations contained in
22 paragraphs 26 through 28, above, as though set forth fully herein.

23 **NINTH CAUSE FOR DISCIPLINE**

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

25 37. Respondent's Smog Check Inspector License is subject to disciplinary action
26 pursuant to Health & Saf. Code section 44072.2, subdivision (d), and Health & Saf. Code section
27 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby
28 another was injured by issuing electronic smog certificates of compliance for 17 vehicles, as

1 described in paragraph 28 above, without performing bona fide inspections of the emission
2 control devices and systems on the vehicles, thereby depriving the People of the State of
3 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
4 refers to, and by this reference incorporates, the allegations contained in paragraphs 26 through
5 28, above, as though set forth fully herein.

6 **OTHER MATTERS**

7 38. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
8 suspend, revoke, or place on probation the registration for all places of business operated in this
9 state by Respondent, upon a finding that he has, or is, engaged in a course of repeated and willful
10 violations of the laws and regulations pertaining to an automotive repair dealer.

11 39. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
12 License No. TC 297756, issued to Respondent, is revoked or suspended, any additional license
13 issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said
14 licensee may be likewise revoked or suspended by the Director.

15 40. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
16 No. EO 642853, issued to Respondent, is revoked or suspended, any additional license issued
17 under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee
18 may be likewise revoked or suspended by the Director.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Director of the Department of Consumer Affairs issue a
22 decision:

23 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
24 297756, issued to Kevin Geovany Sandoval dba Chevy Boys Smog Check;

25 2. Revoking or suspending Smog Check, Test Only Station License Number TC
26 297756, issued to Kevin Geovany Sandoval dba Chevy Boys Smog Check;

27 3. Revoking or suspending Smog Check Inspector License Number EO 642853, issued
28 to Kevin Geovany Sandoval;

1 4. Revoking or suspending nay other Automotive Repair Dealer Registration, issued to
2 Kevin Geovany Sandoval;

3 5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health & Saf. Code in the name of Kevin Geovany Sandoval;

5 6. Ordering Kevin Geovany Sandoval dba Chevy Boys Smog Check and Kevin
6 Geovany Sandoval to pay the Bureau of Automotive Repair the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3; and,

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

10
11
12 DATED: As of Digital Signature Date

13 PATRICK DORAIS
14 Chief
15 Bureau of Automotive Repair
16 Department of Consumer Affairs
17 State of California
18 *Complainant*

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