

1 ROB BONTA
Attorney General of California
2 CHAR SACHSON
Supervising Deputy Attorney General
3 JUSTIN R. SURBER
Deputy Attorney General
4 State Bar No. 226937
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 355-5437
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 79/24-4238

13 **JIMMY JETHRA HENG**
14 **DBA JK SMOG**
15 **270 Martha Street**
San Jose, CA 95112

ACCUSATION

16 **Mailing Address:**
17 **1551 Minardi Ave.**
San Jose, CA 95125

18 **Automotive Repair Dealer Registration No. ARD 303015**
19 **Smog Check, Test-Only, Station License No. TC 303015**

20 **JIMMY JETHRA HENG**
21 **270 Martha Street**
San Jose, CA 95112

22 **Mailing Address:**
23 **1551 Minardi Ave.**
San Jose, CA 95125

24 **Smog Check Inspector License No. EO 138605**

Respondent.

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 July 13, 2022, the Bureau of Automotive Repair issued Automotive
5 Repair Dealer Registration Number ARD 303015 to Jimmy Jethra Heng (Respondent) dba JK
6 Smog. The Automotive Repair Dealer Registration was in full force and effect at all times
7 relevant to the charges brought herein and will expire on July 31, 2025, unless renewed.

8 3. On or about May 16, 2023, the Bureau of Automotive Repair issued Smog Check,
9 Test-Only, Station License Number TC 303015 to Respondent. The Smog Check, Test-Only,
10 Station License was in full force and effect at all times relevant to the charges brought herein and
11 will expire on July 31, 2025, unless renewed. The Smog Check Station License was STAR
12 certified on or about October 4, 2023 and was suspended on November 28, 2023.

13 4. On or about May 11, 2023, the Bureau of Automotive Repair issued Smog Check
14 Inspector License Number EO 138605 to Respondent. The Smog Check Inspector License was in
15 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
16 2025, unless renewed.

17 **JURISDICTION**

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

21 **STATUTORY PROVISIONS FOR ACCUSATION**

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

26 7. Section 9884.7 of the Code states:

27 (a) The director, if the automotive repair dealer cannot show there was a bona
28 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 that constitutes fraud.

...

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

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation the registration for all places of business operated in this state by an automotive repair dealer upon a finding that the automotive repair dealer has, or is, engaged in a course of repeated and willful violations of this chapter, or regulations adopted pursuant to it.

...

(e) For purposes of this section, "fraud" includes, but is not limited to, violations of this chapter involving misrepresentations and all of the following:

(1) Any act or omission that is included within the definition of either "actual fraud" or "constructive fraud," as those terms are defined in Sections 1572 and 1573 of the Civil Code.

(2) A misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact.

(3) A promise or representation not made honestly and in good faith.

(4) An intentional failure to disclose a material fact.

(5) Any act in violation of Section 484 of the Penal Code.

8. 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.

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.

1 10. Section 44012 of the Health and Safety Code states:

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

6 ...

7 11. Section 44032 of the Health and Safety Code states:

8 No person shall perform, for compensation, tests or repairs of emission control
9 devices or systems of motor vehicles required by this chapter unless the person
10 performing the test or repair is a qualified smog check technician and the test or
11 repair is performed at a licensed smog check station. Qualified technicians shall
12 perform tests of emission control devices and systems in accordance with Section
13 44012.

14 12. Section 44059 of the Health and Safety Code states:

15 The willful making of any false statement or entry with regard to a material
16 matter in any oath, affidavit, certificate of compliance or noncompliance, or
17 application form which is required by this chapter or Chapter 20.3 (commencing with
18 Section 9880) of Division 3 of the Business and Professions Code, constitutes perjury
19 and is punishable as provided in the Penal Code.

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

25 14. Section 44072.8 of the Health and Safety Code states:

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

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

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

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

36 ...

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

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

3 ...

4
5 (h) Violates or attempts to violate the provisions of this chapter relating to the
particular activity for which he or she is licensed.

6 16. Section 44072.10, subdivision (c), of the Health and Safety Code states:

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

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

10 (2) Tampering with a vehicle emission control system or test analyzer system.

11 (3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass
12 or falsely fail an inspection.

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

15 **REGULATORY PROVISIONS FOR ACCUSATION**

16 17. California Code of Regulations, title 16, section 3340.24, states:

17 (a) Any disciplinary or reinstatement proceeding under this article involving
licensed stations, licensed technicians, or fleet owners licensed pursuant to section
18 44020 of the Health and Safety Code shall be conducted in accordance with chapter 5
(commencing with section 11500) of division 3, Title 2 of the Government Code.

19 ...

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

23 ...

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

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

26 (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
27 Safety Code, and section 3340.42 of this article.

28 ...

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

2 ...

3 (b) A licensed station shall not sell or otherwise transfer unused certificates to
4 another licensed station, to a new owner of the business, or to any person other than a
5 customer whose vehicle has been inspected in accordance with the procedures
6 specified in section 3340.42 of this article.

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

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

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

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

16 ...

17 (c) No person shall enter any vehicle identification information or emission
18 control system identification data for any vehicle other than the one being tested
19 into the EIS or OIS. Nor shall any person enter into the EIS or OIS any false
20 information about the vehicle being tested.

21 ...

22 (h) No licensed station shall have in the approved testing area at any time
23 any electronic device or software capable of simulating the OBD data stream from a
24 vehicle or manipulating OBD VIN, calibration identification, calibration verification
25 number, MIL-status, readiness, or diagnostic trouble codes collected from a vehicle
26 during a Smog Check Inspection.

27 ...

28 21. California Code of Regulations, title 16, section 3340.42, states:

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.

22. California Code of Regulations, title 16, section 3340.45, states:

All Smog Check inspections shall be performed in accordance with requirements and procedures prescribed in the Smog Check Manual, dated January 2021, which is hereby incorporated by reference.

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. Advertisements and advertising signs shall clearly show the following:

...

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

COST RECOVERY FOR ACCUSATION

25. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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 licensee 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.

SMOG PROGRAM AND CLEAN PLUGGING ALLEGATIONS AT JK SMOG

26. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a Smog Check inspection and receive a Certificate of Compliance every two years when renewing their registration and also when the vehicle's title is transferred. These inspections are performed by Smog Check inspectors at Smog Check Stations, both of which are licensed by the Bureau of Automotive Repair (BAR).

27. The Smog Check inspection in certain Enhanced areas of the State is an Acceleration Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons, Carbon Monoxide, Oxides of Nitrogen, Carbon Dioxide, and Oxygen. The inspection involves a test of the vehicle's tailpipe emissions on a dynamometer. In Basic areas of the State, or depending on a vehicle's configuration (all-wheel drive, traction control issue), a similar test called a Two Speed Idle (TSI) test is performed, but instead of applying a load to the vehicle's drive wheels with a dynamometer, the EIS measures the emissions at idle as well as 2500 revolutions per minute (RPM).

28. The inspector also performs visual and functional tests on the vehicle as outlined in the Smog Check Manual. The visual inspection of the emission control components verifies the required emission control devices are present and properly connected. Functional tests are also performed which, depending on the vehicle, may include checking the ignition timing, malfunction indicator light (MIL), Exhaust Gas Recirculation (EGR) system, a low pressure test of the evaporative emissions controls (LPFET), a visible smoke test, and a pressure test of the gas cap.

29. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring the use of the On Board Diagnostic Inspection System (OIS) instead of the EIS for the smog testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles. Most older vehicles require the ASM or TSI test on the EIS. Gas powered vehicles with a gross vehicle weight rating over 14,000 pounds require an inspection on the EIS.

1 30. The newer OIS smog inspection uses a Data Acquisition Device (DAD), a computer,
2 a bar code scanner, and printer. The DAD is a scan tool that retrieves data from a vehicle's On
3 Board Diagnostic-generation II (OBD II) computer. The DAD connects the BAR OIS computer
4 to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar
5 code scanner is used to input technician information, the vehicle identification number (VIN), and
6 DMV renewal information. The printer is used to print Vehicle Inspection Reports.

7 31. Data retrieved and recorded during a OIS smog check includes: the eVIN, which is
8 the digitally stored VIN programmed into the vehicle's Powertrain Control Module (PCM); the
9 communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses
10 to relay information; and the number of Parameter Identifications (PIDs), which is the number of
11 specific data values each PCM uses related to emissions controls.

12 32. PIDs are data points reported by the vehicle on-board computer to a scan tool or
13 BAR-OIS. Examples of PIDs are engine speed, vehicle speed, engine temperature, and other
14 input and output values utilized by the vehicle's on-board computer.

15 33. As part of the OIS smog inspections, the technician also performs a visual and
16 functional test on the vehicle being inspected. The visual inspection of the emission control
17 components verifies the required emission control devices are present and properly connected and
18 a functional test is performed of the malfunction indicator light (MIL). The OIS software makes
19 the determination whether or not the vehicle passes the inspection based on the results of the
20 OBD, visual and functional tests. If the vehicle passes the inspection a certificate of compliance
21 is issued. The information from the smog inspection is then transmitted to the Vehicle
22 Information Data (VID).

23 34. The Bureau can access the VID to view test data on smog check inspections
24 performed at any Smog Check Station, or search for, retrieve, and print a test record for a
25 particular vehicle which has been tested. The VID has an internal clock that is set to Pacific
26 Standard Time and records the time and date for each inspection. If a vehicle passes the Smog
27 Inspection, the vehicle information and test results are electronically transmitted to Department of
28 Motor Vehicles.

1 35. During an OIS inspection, engine operating parameters are retrieved from the
2 vehicle's OBD II system and recorded to the VID. This is accomplished during the functional
3 portion of the OIS Smog Check inspection by plugging the DAD into the vehicle's DLC when
4 prompted by the OIS analyzer screen prompt. Some of the parameters recorded are:

- 5 a. Engine speed in revolutions per minute (RPM),
- 6 b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the
7 throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up
8 to 100% at full throttle.
- 9 c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
10 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
11 normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle,
12 and 101 kpa at full throttle (atmospheric pressure at sea level).
- 13 d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
14 air intake tract. Air flow is measured in grams per second (gps).

15 36. The Bureau has become aware of methods some Smog Check stations and Smog
16 Check inspectors use to issue smog certificates to vehicles that will not pass a Smog Check test
17 on their own, or in some instances, are not even present during the time the test is performed.

18 37. One method is known as "clean plugging." "Clean plugging" is the act of using one
19 vehicle's properly functioning OBDII system, or another source such as an electronic defeat
20 device, to generate passing data readings or diagnostic information for the purpose of issuing a
21 smog certificate of compliance to a vehicle that is not in smog compliance and/or not being
22 tested. The vehicle being certified is not being tested.

23 38. Defeat devices attempt to simulate engine operation during a Smog Check inspection
24 by transmitting OBD II data to the VID which has been modified or replaced entirely for the
25 purportedly inspected vehicle during the functional portion of the OIS inspection. The use of a
26 defeat device during a Smog Check inspection is clean plugging and is strictly prohibited.

27 39. A Bureau Program Representative performed a detailed review of the VID data for
28 the Smog Check inspections performed at Respondent's facility JK Smog. The review showed a

1 pattern of vehicles being certified with engine operating parameters not corresponding to normal
2 engine operation. Those vehicles received smog certificates but were not tested during the OBD
3 II functional test. They were clean plugged.

4 40. A Program Representative performed a review of the Smog Check data transmitted to
5 the VID during Smog Check Inspections performed by Respondent from November 1, 2023,
6 through March 9, 2024. The review revealed Respondent clean plugged and issued certificates of
7 compliance to 12 vehicles using clean plugging methods. None of the 12 vehicles that were
8 issued a certificate of compliance were legitimately inspected. All of the “inspections” were
9 performed by Respondent at Respondent’s smog check station JK Smog. All 12 of the vehicles
10 were tested and certified under Respondent’s Automotive Repair Dealer Registration, Smog
11 Station license, and Smog Check Inspector license.

12 **Clean Plug 1:**

13 41. On or about November 1, 2023, Respondent issued smog certificate # TO542000C to
14 a 2000 GMC New Sierra C1500, VIN 2GTEC19V7Y1138538. Respondent did not perform a
15 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
16 fraudulent certificate of compliance to this vehicle.

17 42. The Dynamic PID Chart for the 2000 GMC New Sierra C1500 shows between time
18 stamp 125 and 23595 engine speed is steady at around 725 RPM. During this time the throttle is
19 fixed at 0% opening. The MAP is fixed at 37kpa. The MAF is also fixed at 4.75gps. Between
20 time stamp 23936 and 35127 the engine speed is accelerated then held steady at around 1870
21 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is
22 fixed at 37kpa. The MAF is also fixed at 4.75gps. The steady idle and steady elevated engine
23 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
24 with the same as idle speed parameters are not characteristic or expected for normal engine
25 operation.

26 **Clean Plug 2:**

27 43. On or about November 8, 2023, Respondent issued smog certificate # TO664056C to
28 a 2001 Chevrolet Silverado C1500, VIN 2GCEC19T711215297. Respondent did not perform a

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 44. The Dynamic PID Chart for the 2001 Chevrolet Silverado C1500 shows between time
4 stamp 45 and 17818 engine speed is steady at around 800 RPM. During this time the throttle is
5 fixed at 0% opening. The MAP is fixed at 34kpa. The MAF is also fixed at 4.94gps. Between
6 time stamp 18163 and 34336 the engine speed is accelerated then held steady at around 1800
7 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is
8 fixed at 34kpa. The MAF is also fixed at 4.94gps. The steady idle and steady elevated engine
9 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
10 with the same as idle speed parameters are not characteristic or expected for normal engine
11 operation.

12 **Clean Plug 3:**

13 45. On or about November 13, 2023, Respondent issued smog certificate # TO453432C to
14 a 2000 Pontiac Grand AM SE1, VIN 1G2NF12E9YM870888. Respondent did not perform a
15 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
16 fraudulent certificate of compliance to this vehicle.

17 46. The Dynamic PID Chart for the 2000 Pontiac Grand AM SE1 shows between time
18 stamp 334 and 17917 engine speed is steady at around 750 RPM. During this time the throttle is
19 fixed at 0% opening. The MAP is fixed at 41kpa. The MAF is also fixed at 3.92gps. Between
20 time stamp 18281 and 34814 the engine speed is accelerated then held steady at around 1500
21 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is
22 fixed at 41kpa. The MAF is also fixed at 3.92gps. The steady idle and steady elevated engine
23 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
24 with the same as idle speed parameters are not characteristic or expected for normal engine
25 operation.

26 **Clean Plug 4:**

27 47. On or about November 19, 2023, Respondent issued smog certificate # TO912610C
28 to a 2003 Chevrolet Tahoe K1500, VIN 1GNEK13T63J326760. Respondent did not perform a

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 48. The Dynamic PID Chart for the 2003 Chevrolet Tahoe K1500 shows between time
4 stamp 26 and 24938 engine speed is steady at around 650 RPM. During this time the throttle is
5 fixed at 10.6% opening. The MAP is fixed at 42kpa. The MAF is also fixed at 9.85gps. Between
6 time stamp 25295 and 41905 the engine speed is accelerated then held steady at around 1625
7 RPM. During the steady elevated engine RPM, the throttle is fixed at 10.6% opening. The MAP
8 is fixed at 42kpa. The MAF is also fixed at 9.85gps. The steady idle and steady elevated engine
9 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
10 with the same as idle speed parameters are not characteristic or expected for normal engine
11 operation.

12 **Clean Plug 5:**

13 49. On or about November 20, 2023, Respondent issued smog certificate # TO912650C
14 to a 2004 Chevrolet Silverado C2500 Heavy Duty, VIN 1GCHC24U34E101254. Respondent did
15 not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat
16 device to issue a fraudulent certificate of compliance to this vehicle.

17 50. The Dynamic PID Chart for the 2004 Chevrolet Silverado C2500 Heavy Duty shows
18 between time stamp 25 and 18025 engine speed is steady at around 750 RPM. During this time
19 the throttle is fixed at 11% opening. The MAP is fixed at 34kpa. The MAF is also fixed at
20 6.21gps. Between time stamp 18535 and 34571 the engine speed is accelerated then held steady
21 at around 2000 RPM. During the steady elevated engine RPM, the throttle is fixed at 11%
22 opening. The MAP is fixed at 34kpa. The MAF is also fixed at 6.21gps. The steady idle and
23 steady elevated engine speeds with the associated fixed throttle positions and subsequent fixed
24 MAP and MAF readings with the same as idle speed parameters are not characteristic or expected
25 for normal engine operation.

26 **Clean Plug 6:**

27 51. On or about November 22, 2023, Respondent issued smog certificate # IX462813C to
28 a 2001 Chevrolet Corvette, VIN 1G1YY22G115129072. Respondent did not perform a

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 52. The Dynamic PID Chart for the 2001 Chevrolet Corvette shows between time stamp
4 42 and 40364 engine speed is steady at around 800 RPM. During this time the throttle is fixed at
5 3.1% opening. The MAP is fixed at 37kpa. The MAF is also fixed at 5.22gps. Between time
6 stamp 40686 and 57143 the engine speed is accelerated then held steady at around 2100 RPM.
7 During the steady elevated engine RPM, the throttle is fixed at 3.1% opening. The MAP is fixed
8 at 37kpa. The MAF is also fixed at 5.22gps. The steady idle and steady elevated engine speeds
9 with the associated fixed throttle positions and subsequent fixed MAP and MAF readings with the
10 same as idle speed parameters are not characteristic or expected for normal engine operation.

11 **Clean Plug 7:**

12 53. On or about November 23, 2023, Respondent issued smog certificate # IX462838C to
13 a 2002 Cadillac Escalade Luxury, VIN 1GYEK63N72R194903. Respondent did not perform a
14 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
15 fraudulent certificate of compliance to this vehicle.

16 54. The Dynamic PID Chart for the 2002 Cadillac Escalade Luxury shows between time
17 stamp 42 and 35633 engine speed is steady at around 550 RPM. During this time the throttle is
18 fixed at 8.6% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 5.86gps. Between
19 time stamp 35948 and 52638 the engine speed is accelerated then held steady at around 1600
20 RPM. During the steady elevated engine RPM, the throttle is fixed at 8.6% opening. The MAP
21 is fixed at 35kpa. The MAF is also fixed at 5.86gps. The steady idle and steady elevated engine
22 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
23 with the same as idle speed parameters are not characteristic or expected for normal engine
24 operation.

25 **Clean Plug 8:**

26 55. On or about December 15, 2023, Respondent issued smog certificate # IX481141C to
27 a 2003 Chevrolet Silverado C1500, VIN 1GCEC19V03Z117868. Respondent did not perform a
28

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 56. The Dynamic PID Chart for the 2003 Chevrolet Silverado C1500 shows between time
4 stamp 24 and 17650 engine speed is steady at around 550 RPM. During this time the throttle is
5 fixed at 12.5% opening. The MAP is fixed at 41kpa. The MAF is also fixed at 7.85gps.
6 Between time stamp 17992 and 34102 the engine speed is accelerated then held steady at around
7 1750 RPM. During the steady elevated engine RPM, the throttle is fixed at 12.5% opening. The
8 MAP is fixed at 41kpa. The MAF is also fixed at 7.85gps. The steady idle and steady elevated
9 engine speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF
10 readings with the same as idle speed parameters are not characteristic or expected for normal
11 engine operation.

12 **Clean Plug 9:**

13 57. On or about January 25, 2024, Respondent issued smog certificate # TQ772339C to a
14 2002 Chevrolet Silverado K1500, VIN 2GCEK19T821216589. Respondent did not perform a
15 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
16 fraudulent certificate of compliance to this vehicle.

17 58. The Dynamic PID Chart for the 2002 Chevrolet Silverado K1500 shows
18 between time stamp 39 and 17755 engine speed is steady at around 650 RPM. During this time
19 the throttle is fixed at 0% opening. The MAP is fixed at 41kpa. The MAF is also fixed at
20 6.42gps. Between time stamp 18104 and 34309 the engine speed is accelerated then held steady at
21 around 2100 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening.
22 The MAP is fixed at 41kpa. The MAF is also fixed at 6.42gps. The steady idle and steady
23 elevated engine speeds with the associated fixed throttle positions and subsequent fixed MAP and
24 MAF readings with the same as idle speed parameters are not characteristic or expected for
25 normal engine operation.

26 **Clean Plug 10:**

27 59. On or about February 24, 2024, Respondent issued smog certificate # TS919619C to
28 a 2001 Chevrolet Tahoe K1500, VIN 1GNEK13T11R167063. Respondent did not perform a

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 60. The Dynamic PID Chart for the 2001 Chevrolet Tahoe K1500 shows between
4 time stamp 23 and 18725 engine speed is steady at around 700 RPM. During this time the throttle
5 is fixed at 0% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 4.57gps. Between
6 time stamp 19062 and 35137 the engine speed is accelerated then held steady at around 1700
7 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is
8 fixed at 35kpa. The MAF is also fixed at 4.57gps. The steady idle and steady elevated engine
9 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
10 with the same as idle speed parameters are not characteristic or expected for normal engine
11 operation.

12 **Clean Plug 11:**

13 61. On or about March 9, 2024, Respondent issued smog certificate # TU116173C to a
14 2000 Chevrolet Silverado K1500, VIN 2GCEK19T5Y1113350. Respondent did not perform a
15 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
16 fraudulent certificate of compliance to this vehicle.

17 62. The Dynamic PID Chart for the 2000 Chevrolet Silverado K1500 shows between
18 time stamp 36 and 17335 engine speed is steady at around 720 RPM. During this time the throttle
19 is fixed at 0.4% opening. The MAP is fixed at 36kpa. The MAF is also fixed at 5.5gps. Between
20 time stamp 17681 and 33669 the engine speed is accelerated then held steady at around 2000
21 RPM. During the steady elevated engine RPM, the throttle is fixed at 0.4% opening. The MAP
22 is fixed at 36kpa. The MAF is also fixed at 5.5gps. The steady idle and steady elevated engine
23 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
24 with the same as idle speed parameters are not characteristic or expected for normal engine
25 operation.

26 **Clean Plug 12:**

27 63. On or about March 9, 2024, Respondent issued smog certificate # TU116180C to a
28 2001 GMC New Sierra C1500, VIN 1GTEC19T31Z175713. Respondent did not perform a

1 legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to issue a
2 fraudulent certificate of compliance to this vehicle.

3 64. The Dynamic PID Chart for the 2001 GMC New Sierra C1500 shows between
4 time stamp 44 and 17089 engine speed is steady at around 875 RPM. During this time the throttle
5 is fixed at 0% opening. The MAP is fixed at 38kpa. The MAF is also fixed at 6.79gps. Between
6 time stamp 17452 and 33550 the engine speed is accelerated then held steady at around 2050
7 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is
8 fixed at 38kpa. The MAF is also fixed at 6.79gps. The steady idle and steady elevated engine
9 speeds with the associated fixed throttle positions and subsequent fixed MAP and MAF readings
10 with the same as idle speed parameters are not characteristic or expected for normal engine
11 operation.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements - Registration)**

14 65. Respondent has subjected his Automotive Repair Dealer Registration to discipline
15 under Code section 9884.7, subdivision (a)(1), in that Respondent made statements which he
16 knew or which by exercise of reasonable care should have known were untrue or misleading, as
17 set forth above in the Smog Program and Clean Plugging Allegations. Respondent purported to
18 test vehicles, and certified that the vehicles passed inspection and were in compliance with
19 applicable laws and regulations. In fact, Respondent conducted the inspections on those vehicles
20 using clean-plugging methods.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Fraud - Registration)**

23 66. Respondent has subjected his Automotive Repair Dealer Registration to discipline
24 under Code section 9884.7, subdivision (a)(4), in that he committed acts which constitute fraud,
25 as set forth above in the Smog Program and Clean Plugging Allegations.

26 ///

27 ///

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(False or Misleading Records-Registration)**

3 67. Respondent has subjected his Automotive Repair Dealer Registration to discipline
4 under Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations,
5 title 16, section 3373, by creating and issuing false or misleading certificates of compliance and
6 vehicle inspection reports for the 12 vehicles that were clean plugged as set forth above in the
7 Smog Program and Clean Plugging Allegations. The certificates and inspection reports indicated
8 the vehicles were tested in accordance with all bureau requirements and the vehicles were
9 qualified to receive certificates of compliance. This was false as the vehicles were clean
10 plugged.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Dishonesty, Fraud or Deceit – Smog Licenses)**

13 68. Respondent has subjected his Smog Check Station License and Smog Check
14 Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2,
15 subdivision (d), in that he committed acts involving dishonesty, fraud or deceit, whereby another
16 was injured by issuing electronic certificates of compliance for vehicles without performing bona
17 fide inspections of the emission control devices and systems on the vehicles, thereby depriving
18 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
19 Program, as set forth above in the Smog Program and Clean Plugging Allegations.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Violation of the Motor Vehicle Inspection Program- Smog Licenses)**

22 69. Respondent has subjected his Smog Check Station License and Smog Check
23 Inspector License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2,
24 subdivisions (a) and (c), in that he violated sections of that Code and applicable regulations,
25 through conduct described in the Smog Program and Clean Plugging Allegations, as follows:

26 a. **Section 44012:** Respondent failed to ensure that smog inspections were performed
27 on vehicles in accordance with procedures prescribed by the department.
28

b. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued electronic certificates of compliance to certain vehicles without performing bona fide inspections of the emission control devices and systems on those vehicles.

c. **Section 3340.30, subdivision (a):** Respondent failed to inspect the vehicles in accordance with Health and Safety Code section 44012 and California Code of Regulations, title 16, section 3340.42.

d. **Section 3340.41, subdivision (c):** Respondent entered false information about vehicles being tested into OIS.

e. **Section 3340.41, subdivision (h):** Respondent had electronic devices or software capable of simulating the OBD data stream from a vehicle or manipulating OBD VIN, calibration identification, calibration verification number, MIL status, readiness, or diagnostic trouble codes collected from a vehicle during a Smog Check Inspection in the approved testing area of the station.

f. **Section 3340.42:** Respondent failed to conduct the required smog tests and inspections on certain vehicles in accordance with the Bureau's specifications.

g. **Section 3340.45** Respondent violated the procedures contained in the Smog Check Manual by entering vehicle identification information for a vehicle that was not being tested.

h. **Section 44059:** Respondent willfully made false statements in issuing the Smog Certificates of compliance and on the Vehicle Inspection Reports.

OTHER MATTERS

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

71. Pursuant to Health & Safety Code section 44072.8, if Respondent's Smog Check Station License or Smog Check Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 303015, issued to Jimmy Jethra Heng dba JK Smog;
2. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to Jimmy Jethra Heng;
3. Revoking or suspending Smog Check, Test-Only, Station License Number TC 303015, issued to Jimmy Jethra Heng dba JK Smog;
4. Revoking or suspending Smog Check Inspector License Number EO 138605, issued to Jimmy Jethra Heng;
5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Jimmy Jethra Heng;
5. Ordering Jimmy Jethra Heng 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; and, if placed on probation, the costs of probation monitoring; and,
6. Taking such other and further action as deemed necessary and proper.

DATED: As of Digital Signature Date

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

SF2024401484
accusation.docx