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

12 In the Matter of the Accusation Against:

Case No. 79/24-15162

13 **MARLON EZEQUIEL UMANZOR, DBA**
14 **SMOGWAY**

211 S. Mt. Vernon Ave., Unit B
San Bernardino, CA 92410

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
16 **ARD 306766**
17 **Smog Check, Test-Only, Station License No.**
18 **TC 306766,**

19 **and**

20 **MARLON EZEQUIEL UMANZOR**
21 211 S. Mt. Vernon Ave., Unit B
San Bernardino, CA 92410

22 **Smog Check Inspector License No. EO**
23 **644692**

24 Respondents.

25 **PARTIES**

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

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2. On or about August 21, 2023, Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 306766 to Marlon Ezequiel Umanzor, dba Smogway (Respondent Smogway). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2026, unless renewed.

3. On or about February 1, 2024, Bureau of Automotive Repair issued Smog Check, Test-Only, Station License Number TC 306766 to Respondent Smogway. The Smog Check, Test-Only, Station License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2026, unless renewed.

4. On or about November 20, 2023, Bureau of Automotive Repair issued Smog Check Inspector License Number EO 644692 to Marlon Ezequiel Umanzor (Respondent Umanzor). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2025, unless renewed.

JURISDICTION

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

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

7. Bus. & Prof. Code section 9884.7 provides that the Director may revoke an 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.

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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. Bus. & Prof. Code section 9884.7 states, in pertinent part:

(a) The director, if 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 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.

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

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

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

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

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

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

11 14. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of
12 compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
13 44012.

14 15. Health & Saf. Code section 44032 provides that qualified technicians shall perform
15 tests of emissions control devices and systems in accordance with Health & Saf. Code section
16 44012.

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

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

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

22

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

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

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

27

28 (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 of vehicles. A fraudulent inspection includes, but is not limited to, all of the following:

- (1) Clean piping, as defined by the department.
- (2) Tampering with a vehicle emission control system or test analyzer system.
- (3) Tampering with a vehicle in a manner that would cause the vehicle to falsely pass or falsely fail an inspection.
- (4) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter

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

REGULATORY PROVISIONS

19. California Code of Regulations (CCR), title 16, section 3340.24, subdivision (c), states:

“The bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

20. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42 of this article.”

21. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check 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.”

22. CCR, title 16, section 3340.41 states, in pertinent part:

. . . .

(b) No person shall enter any access or qualification number other than as

1 authorized by the Bureau into the EIS or OIS, nor in any way tamper with the EIS or
2 OIS.

3 (c) No person shall enter any vehicle identification information or emission
4 control system identification data for any vehicle other than the one being tested into
5 the EIS or OIS. Nor shall any person enter into the EIS or OIS any false information
6 about the vehicle being tested

7 23. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
8 procedures which apply to all vehicles inspected in the State of California.

9 **COST RECOVERY**

10 24. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request
11 the administrative law judge to direct a licentiate found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 **CALIFORNIA'S SMOG CHECK PROGRAM**

15 25. California's Smog Check Program requires most vehicles in the State to undergo a
16 smog check inspection every two years or when the vehicle's title is transferred.

17 26. A smog check inspection in certain Enhanced areas of the State is an Acceleration
18 Simulation Mode (ASM) test performed using an Emission Inspection System (EIS), also known
19 as a BAR 97. This is a computer based five-gas analyzer that measures Hydrocarbons (HC),
20 Carbon Monoxide (CO), Oxides of Nitrogen (NOx), Carbon Dioxide (CO²) and Oxygen (O²).
21 The first part of the test is a loaded mode test of the vehicle's tailpipe emissions on a
22 dynamometer. The vehicle's drive wheels are placed on rollers, and the vehicle is driven to
23 simulate driving conditions while the emissions are sampled by the EIS.

24 27. In Basic areas of the State, or depending on a vehicle's configuration, a similar test
25 called a Two Speed Idle test is performed, but instead of applying a load to the vehicle's drive
26 wheels with a dynamometer, the EIS measures the emissions of HC, CO, O², and CO² at idle as
27 well as 2500 revolutions per minute (rpm).

28 28. In the visual portion of a smog check, the technician inspects the emission control
components to verify that the required emission control devices are present and properly
connected.

1 29. An On-Board Diagnostics (OBD II) functional test is also performed on most 1996 to
2 1999 model year vehicles. The EIS retrieves information through the Diagnostic Link Connector
3 (DLC) from the vehicle's on-board computer about its ability to communicate, the status of the
4 I/M readiness monitors and the MIL light command. The I/M readiness monitors tell whether or
5 not the OBD II system has run a sufficient number of self-tests on the vehicle's emission and
6 engine control systems. A failure of one or more of the OBD II functional criteria, depending on
7 model year, will result in the vehicle failing its smog check inspection. In addition to reporting
8 the outcome of the OBD II functional test, the smog check inspection results also show
9 Diagnostic Trouble Codes (DTC) if there are any in the vehicle's on-board computer memory.

10 30. The inspector enters the results of the visual and functional inspections into the EIS.
11 The EIS unit makes the determination whether or not the vehicle passes the inspection based on
12 the results of the tailpipe, visual and functional tests.

13 31. The EIS is connected by internet connection to Bureau's Vehicle Information
14 Database (VID). If the vehicle passes the visual, functional and tailpipe tests, it passes the overall
15 inspection. A Certificate of Compliance is issued and transmitted electronically to the VID.
16 Additionally, all data gathered during a Smog Check inspection, regardless of the type of
17 inspection, is transmitted to and retained in the VID.

18 32. Beginning March 9, 2015, California's Smog Check Program was updated to require
19 the use of an On-Board Diagnostic Inspection System (BAR-OIS). BAR-OIS is the smog check
20 equipment required in all areas of the State when inspecting most model-year 2000 and newer
21 gasoline and hybrid vehicles. The system consists of a certified Data Acquisition Device (DAD),
22 computer, bar code scanner, and printer. The DAD is an OBD scan tool that, when requested by
23 the BAR-OIS software, retrieves OBD data from the vehicle. All OBD data that the vehicle
24 indicates it supports is requested by the BAR-OIS software and will be retrieved. The DAD
25 connects between the BAR-OIS computer and the vehicle's DLC. The bar code scanner is used to
26 input inspector information, the vehicle identification number (VIN), and Department of Motor
27 Vehicles renewal information. The printer provides a Vehicle Inspection Report (VIR)
28 containing inspection results for motorists and a Smog Check Certificate of Compliance number

1 for passing vehicles.

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

- 6 • Engine speed in revolutions per minute (RPM)
- 7 • Throttle position as measured by a throttle position sensor (TPS) mounted onto the
8 throttle shaft. Measured in a percentage of opening from 0% at idle and near or up to 100% at full
9 throttle.
- 10 • Manifold absolute pressure as measured by a manifold air pressure sensor (MAP)
11 connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a
12 normally aspirated vehicle as follows: 0 kpa being absolute vacuum, 25 to 45 kpa at idle, 101 kpa
13 at full throttle, same as atmospheric pressure at sea level.
- 14 • Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's
15 air intake tract. Measured in grams per second (gps).
- 16 • Ignition timing is set by the vehicle PCM based on engine speed and load, and is
17 measured in degrees Before Top Dead Center (BTDC).

18 Not all vehicles include both MAP and MAF parameters. Many vehicles will have either
19 MAP or MAF parameters separately.

20 34. During normal engine operation at idle, engine speed is relatively steady around its
21 target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or
22 MAF readings are also steady. For the engine speed to increase, the throttle would have to be
23 opened in order to increase airflow through the engine. The engine's management systems
24 supply fuel and spark timing appropriate to any changes in throttle position and engine speed.
25 An increase in throttle, measured by the TPS, which increases engine RPM, would result in a
26 corresponding increase in MAF as well as a change in MAP. Any movement in the throttle from
27 the idle position will result in an increase of airflow through the engine with corresponding
28 increases RPM and MAF along with changes in MAP.

35. During an OIS Smog Check inspection, along with other visual and functional inspections, there is an OBD II query portion of the inspection. The OBD II query is performed with the engine idling and, when requested by the OIS analyzer, and an elevated or increased engine speed. The increase in engine speed is performed by the inspector by stepping on the throttle pedal or manually opening the throttle resulting in a corresponding increase in engine RPMs by allowing an increase in airflow into the engine.

36. The Bureau has become aware of methods that some Smog Check stations and Smog Check inspectors use to fraudulently issue smog certificates to vehicles that may not pass a smog check test on their own, or in some instances, are not even present during the time the test is performed. “Clean plugging” is a method by which another vehicle’s OBD II system, or another source such as defeat devices, are used to generate passing data readings or diagnostic information for the purpose of fraudulently issuing smog certificates to vehicles that are not in smog compliance, and or not present for testing. Defeat devices attempt to simulate engine operation during a smog check inspection by transmitting OBD II data to the VID which has been modified or replaced entirely for the purportedly inspected vehicle during the functional portion of the OIS inspection.

FACTUAL ALLEGATIONS

37. On or about August 23, 2024, a Bureau Representative conducted a detailed review of the VID data for Smog Check inspections performed at Smogway which showed a pattern of vehicles being certified with engine operating parameters that did not correspond to normal engine operation, confirming the vehicles receiving smog certifications were not tested during the OBD II functional test, which constitutes clean plugging. The Bureau's review of the smog check activities at Smogway confirmed ten (10) Smog Check Certificates of Compliance were fraudulently issued by Smogway to vehicles that were inspected by Respondent Umanzor.

OIS Test Data for Smogway indicated the following:

Fraudulent Inspection Number 1 – 2002 Avalanche

38. On July 17, 2024, a 2002 Chevrolet Avalanche K1500, VIN# 3GNEK13T82G128438 (2002 Avalanche), was tested and Smog Check certificate # UA398712C was issued. The

dynamic data and PID charts for the 2002 Avalanche shows, between time stamps 45 and 25356, engine speed is steady at approximately 550 RPM. During this time, the TPS is fixed at a 2.7% opening, the MAF is fixed at 4.84 gps, and the spark timing for #1 cylinder is fixed at 18 degrees Before Top Dead Center (BTDC). After time stamp 25356, the engine speed increases to approximately 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 2.7% opening, the MAF is fixed at the same 4.84gps, and the spark timing for #1 cylinder is fixed at the same 18 degrees BTDC.

39. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the 2002 Avalanche being certified, causing the issuance of a fraudulent Smog Check certificate of compliance.

Fraudulent Inspection Number 2 – 2006 New Beetle

40. On August 1, 2024, a 2006 Volkswagen New Beetle 2.5L Option Package 2, VIN# 3VWSG31C76M413583 (2006 New Beetle), was tested and Smog Check certificate #UA398748C was issued. The dynamic data and PID charts for the 2006 New Beetle shows, between time stamps 142 and 17647, engine speed is approximately 600 RPM. During this time, the TPS is fixed at a 14.1% opening, the MAP is fixed at 45 kPa, the MAF is fixed at 2.05 gps, and the spark timing for #1 cylinder is fixed at 24.5 degrees BTDC. After time stamp 17647, the engine speed increases to approximately 2000 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 14.1% opening, the MAP is fixed at the same 45 kPa, the MAF is fixed at the same 2.05 gps and the spark timing for #1 cylinder is fixed at the same 24.5 degrees BTDC.

41. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAP, MAF, and spark timing readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for

1 normal engine operation. The discrepancies in the dynamic data prove the DAD was not
2 connected to the 2006 New Beetle being certified, causing the issuance of
3 a fraudulent Smog Check certificate of compliance.

4 **Fraudulent Inspection Number 3 – 2003 Sequoia**

5 42. On August 1, 2024, a 2003 Toyota Sequoia SR5, VIN# 5TDBT44A33S182739 (2003
6 Sequoia), was tested and Smog Check certificate # UC063401C was issued. The dynamic data
7 and PID charts for the 2003 Sequoia shows, between time stamps 141 and 16757, engine speed is
8 steady at approximately 750 RPM. During this time, the TPS is fixed at a 19.2% opening, the
9 MAF is fixed at 7.31 gps, and the spark timing for #1 cylinder is fixed at 15.5 degrees BTDC.
10 After time stamp 16757, the engine speed increases to approximately 2200 RPM. From the time
11 the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 19.2%
12 opening, the MAF is fixed at the same 7.31 gps, and the spark timing for #1 cylinder is fixed at
13 the same 15.5 degrees BTDC.

14 43. During the period the dynamic data was collected, the only parameter that changed
15 was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though
16 the engine speed was increased. These readings are not characteristic or expected for normal
17 engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the
18 2003 Sequoia being certified, causing the issuance of a fraudulent Smog Check certificate of
19 compliance.

20 **Fraudulent Inspection Number 4 – 2002 ML**

21 44. On August 5, 2024, a 2002 Mercedes-Benz ML 320, VIN# 4JGAB54E02A301510,
22 (2002 ML), was tested and Smog Check certificate # UC063405C was issued. The dynamic data
23 and PID charts for the 2002 ML shows, between time stamps 138 and 17246, engine speed is
24 steady at approximately 650 RPM. During this time, the TPS is fixed at a 3.9% opening, the MAP
25 is fixed at 32 kpa, the MAF is fixed at 3.66 gps, and the spark timing for #1 cylinder is fixed at -
26 18 degrees BTDC. After time stamp 17246, the engine speed increases to approximately 2300
27 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at
28

the same 3.9% opening, the MAP is fixed at the same 32 kpa, the MAF is fixed at the same 3.66 gps, and the spark timing for #1 cylinder is fixed at the same -18 degrees BTDC.

45. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAP, MAF, and spark timing readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the 2002 ML being certified, causing the issuance of a fraudulent Smog Check certificate of compliance.

Fraudulent Inspection Number 5 – 2002 325i

46. On August 7, 2024, a 2002 BMW 325i, VIN# WBAET37462NG74974 (2002 325i), was tested and Smog Check certificate # UC063417C was issued. The dynamic data and PID charts for the 2002 325i shows, between time stamps 115 and 16743, engine speed is steady at approximately 750 RPM. During this time, the TPS is fixed at a 10.2% opening, the MAF is fixed at 5.53 gps, and the spark timing for #1 cylinder is fixed at -2 degrees BTDC. After time stamp 16743, the engine speed increases to approximately 2150 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 10.2% opening, the MAF is fixed at the same 5.53 gps, and the spark timing for #1 cylinder is fixed at the same -2 degrees BTDC.

47. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the 2002 325i being certified, causing the issuance of a fraudulent Smog Check certificate of compliance.

Fraudulent Inspection Number 6 – 2001 Maxima

48. On August 8, 2024, a 2001 Nissan Maxima GXE, VIN# JN1CA31D71T806577 (2001 Maxima), was tested and Smog Check certificate # UC063418C was issued. The dynamic data and PID charts for the 2001 Maxima shows, between time stamps 209 and 17604 engine,

1 speed is steady at approximately 700 RPM. During this time, the TPS is fixed at a 0% opening,
2 the MAF is fixed at 3.32 gps, and the spark timing for #1 cylinder is fixed at 15 degrees BTDC.
3 After time stamp 17604, the engine speed increases to approximately 1850 RPM. From the time
4 the engine RPM increases off idle to the higher RPMs, the throttle is fixed at the same 0%
5 opening, the MAF is fixed at the same 3.32 gps, and the spark timing for #1 cylinder is fixed at
6 the same 15 degrees BTDC.

7 49. During the period the dynamic data was collected, the only parameter that changed
8 was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though
9 the engine speed was increased. These readings are not characteristic or expected for normal
10 engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the
11 2001 Maxima being certified, causing the issuance of a fraudulent Smog Check certificate of
12 compliance.

13 **Fraudulent Inspection Number 7 – 2001 525i**

14 50. On November 8, 2024, a 2001 BMW 525i Automatic, VIN#
15 WBADT43431GX24365 (2001 525i), was tested and Smog Check certificate # UG142857C was
16 issued. The dynamic data and PID charts for the 2001 525i shows, between time stamps 124 and
17 16850, engine speed is steady at approximately 800 RPM. During this time, the TPS is fixed at
18 0% opening, the MAF is fixed at 4.62 gps, and the spark timing for #1 cylinder is fixed at 0.5
19 degrees BTDC. After time stamp 16850, the engine speed increases to approximately 1600 RPM.
20 From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same
21 0% opening, the MAF is fixed at the same 4.62 gps, and the spark timing for #1 cylinder is fixed
22 at the same 0.5 degrees BTDC.

23 51. During the period the dynamic data was collected, the only parameter that changed
24 was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though
25 the engine speed was increased. These readings are not characteristic or
26 expected for normal engine operation. The discrepancies in the dynamic data prove the DAD was
27 not connected to the 2001 525i being certified, causing the issuance of a fraudulent Smog Check
28 certificate of compliance.

Fraudulent Inspection Number 8 – 2005 Accord

52. On December 6, 2024, a 2005 Honda Accord LX, VIN# 1HGCM564X5A077664 (2005 Accord), was tested and Smog Check certificate # UG142880C was issued. The dynamic data and PID charts for the 2005 Accord shows, between time stamps 145 and 17929, engine speed is steady at approximately 850 RPM. During this time, the TPS is fixed at a 9.8% opening, the MAP is fixed at 25 kpa, the MAF is fixed at 2.15 gps, and the spark timing for #1 cylinder is fixed at 7 degrees BTDC. After time stamp 18242, the engine speed increases to approximately 2200 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 9.8% opening, the MAP is fixed at the same 25 kpa, the MAF is fixed at the same 2.15 gps, and the spark timing for #1 cylinder is fixed at the same 7 degrees BTDC.

53. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAP, MAF, and spark timing readings remained unchanged even though the engine speed was increased. These readings are not characteristic or expected for normal engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the 2005 Accord being certified, causing the issuance of a fraudulent Smog Check certificate of compliance.

Fraudulent Inspection Number 9 – 2003 Camry

54. On December 6, 2024, a 2003 Toyota Camry LE, VIN# 4T1BE32K33U731685 (2003 Camry), was tested and Smog Check certificate # UG142881C was issued. The dynamic data and PID charts for the 2003 Camry shows, between time stamps 161 and 17060, engine speed is steady at approximately 750 RPM. During this time, the TPS is fixed at a 15.7% opening, the MAF is fixed at 3.15gps, and the spark timing for #1 cylinder is fixed at 15 degrees BTDC. After time stamp 17060, the engine speed increases to approximately 2100 RPM. From the time the engine RPM increases off idle to the higher RPMs, the TPS is fixed at the same 15.7% opening, the MAF is fixed at the same 3.15 gps, and the spark timing for #1 cylinder is fixed at the same 15 degrees BTDC.

55. During the period the dynamic data was collected, the only parameter that changed was engine RPM. The TPS, MAF, and spark timing readings remained unchanged even though

1 the engine speed was increased. These readings are not characteristic or expected for normal
2 engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the
3 2003 Camry being certified, causing the issuance of a fraudulent Smog Check certificate of
4 compliance.

5 **Fraudulent Inspection Number 10 – 2004 Ram**

6 56. On December 17, 2024, a 2004 Dodge Ram 1500 ST, VIN# 1D7HA18N54J162265
7 (2004 Ram), was tested and Smog Check certificate # UG142889C was issued. The dynamic
8 data and PID charts for the 2004 Ram shows, between time stamps 63 and 18893, engine speed is
9 steady at approximately 600 RPM. During this time, the TPS is fixed at 10.2% opening, the MAP
10 is fixed at 36 kpa, and the spark timing for #1 cylinder is fixed at 10.5 degrees BTDC. After time
11 stamp 18893, the engine speed increases to approximately 2050 RPM. From the time the engine
12 RPM increases off idle to the higher RPMs, the TPS is fixed at the same 10.2% opening, the
13 MAP is fixed at the same 36 kpa, and the spark timing for #1 cylinder is fixed at the same 10.5
14 degrees BTDC.

15 57. During the period the dynamic data was collected, the only parameter that changed
16 was engine RPM. The TPS, MAP, and spark timing readings remained unchanged even though
17 the engine speed was increased. These readings are not characteristic or expected for normal
18 engine operation. The discrepancies in the dynamic data prove the DAD was not connected to the
19 2004 Ram being certified, causing the issuance of a fraudulent Smog Check certificate of
20 compliance.

21 **RESPONDENT SMOGWAY:**

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Untrue of Misleading Statements)**

24 58. Respondent Smogway's Automotive Repair Dealer Registration is subject to
25 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that he
26 made statements which were known to be untrue or misleading or, which by exercise of
27 reasonable care should have been known to be untrue or misleading, by issuing electronic smog
28 certificates of compliance for the ten (10) vehicles set forth in paragraphs 37-57 above, certifying

1 that those vehicles were in compliance with applicable laws and regulations when, in fact, those
2 vehicles had not been so inspected. Complainant refers to, and by this reference incorporates, the
3 allegations contained in paragraphs 37-57, above, as though set forth fully herein.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Fraud)**

6 59. Respondent Smogway's Automotive Repair Dealer Registration is subject to
7 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that he
8 committed acts that constitute fraud by issuing electronic certificates of compliance to the ten
9 (10) vehicles set forth in paragraphs 37-57, above, without performing bone fide inspections of
10 the emission control devices and systems on those vehicles, thereby depriving the People of the
11 State of California of the protection afforded by the Motor Vehicle Inspection Program.
12 Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs
13 37-57, above, as though set forth fully herein.

14 **THIRD CAUSE FOR DISCIPLINE**

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

16 60. Respondent Smogway's Automotive Repair Dealer Registration is subject to
17 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that he
18 failed in a material respect to comply with the provisions of this chapter or regulations adopted
19 pursuant to it when he issued electronic certificates of compliance for the ten (10) vehicles set
20 forth in paragraphs 37-57, above, without performing bona fide inspections of the emission
21 control devices and systems on those vehicles, thereby depriving the People of the State of
22 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
23 refers to, and by this reference incorporates, the allegations contained in paragraphs 37-57, above,
24 as though set forth fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

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

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on the ten (10) vehicles identified in paragraphs 37-57, above, in accordance with
8 procedures prescribed by the department.

9 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
10 compliance to the ten (10) vehicles identified in paragraphs 37-57, above, without properly
11 testing and inspecting those vehicles to determine if they were in compliance with Health & Saf.
12 Code section 44012.

13 Complainant refers to, and by this reference incorporates, the allegations contained in
14 paragraphs 37-57, 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 62. Respondent Smogway's Smog Check Test Only Station License is subject to
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that he
20 failed to comply with 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 the ten (10) vehicles identified in paragraphs 37-
23 57, above.

24 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the ten (10)
25 vehicles identified in paragraphs 37-57, above, in accordance with Health & Saf. Code sections
26 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

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1 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
2 compliance for the ten (10) vehicles identified in paragraphs 37-57, above, even though those
3 vehicles had not been inspected in accordance with section 3340.42.

4 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
5 on the ten (10) vehicles identified in paragraphs 37-57 above, were done in accordance with the
6 Bureau's specifications.

7 Complainant refers to, and by this reference incorporates, the allegations contained in
8 paragraphs 37-57, above, as though set forth fully herein.

9 **SIXTH CAUSE FOR DISCIPLINE**

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

11 63. Respondent Smogway's Smog Check Test Only Station License is subject to
12 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in
13 conjunction with Health & Saf. Code section 44072.10, subdivision (c), in that he committed
14 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
15 certificates of compliance for the ten (10) vehicles described in paragraphs 37-57, above, without
16 performing bona fide inspections of the emission control devices and systems on those vehicles,
17 thereby depriving the People of the State of California of the protection afforded by the Motor
18 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
19 allegations contained in paragraphs 37-57, above, as though set forth fully herein.

20 **RESPONDENT UMANZOR:**

21 **SEVENTH CAUSE FOR DISCIPLINE**

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

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

26 a. **Section 44032:** Respondent failed to perform tests of emission control devices and
27 systems of the ten (10) vehicles identified in paragraphs 37-57, above, in accordance with Health
28 & Saf. Code section 44012.

1 b. **Section 44015, subdivision (b):** Respondent caused electronic smog certificates of
2 compliance to be issued for the ten (10) vehicles identified in paragraphs 37-57, above, without
3 ensuring that they were properly tested and inspected to determine if they were in compliance
4 with Health & Saf. Code section 44012.

5 Complainant refers to, and by this reference incorporates, the allegations contained in
6 paragraphs 37-57, above, as though set forth fully herein.

7 **EIGHTH CAUSE FOR DISCIPLINE**
8 **(Failure to Comply with Regulations Pursuant**
9 **to the Motor Vehicle Inspection Program)**

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

13 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
14 electronic smog certificates of compliance for the ten (10) vehicles identified in paragraphs 37-
15 57, above.

16 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the ten (10)
17 vehicles identified in paragraphs 37-57, above, in accordance with Health & Saf. Code sections
18 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

19 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
20 into the emissions inspection system for the ten (10) vehicles identified in paragraphs 37-57,
21 above.

22 d. **Section 3340.42:** Respondent failed to ensure that the smog inspections conducted
23 on the ten (10) vehicles identified in paragraphs 37-57, above, were done in accordance with the
24 Bureau's specifications.

25 Complainant refers to, and by this reference incorporates, the allegations contained in
26 paragraphs 37-57, above, as though set forth fully herein.

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NINTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit)

66. Respondent Umanzor’s Smog Check Inspector License is subject to disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in conjunction with Health & Saf. Code section 44072.10, subdivision (c), in that he committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates of compliance for the ten (10) vehicles identified in paragraphs 37-57, above, without performing bona fide inspections of the emission control devices and systems on those vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the allegations contained in paragraphs 37-57, above, as though set forth fully herein.

OTHER MATTERS

67. Pursuant to Bus. & Prof. 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 Smogway, upon a finding that it has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

68. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station License No. TC 306766, issued to Respondent Smogway, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the director.

69. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License No. EO 644692, issued to Respondent Umanzor, is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of said licensee may be likewise revoked or suspended by the director.

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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 306766, issued to Marlon Ezequiel Umanzor, dba Smogway;
2. Revoking or suspending any other automotive repair dealer registration issued to Marlon Ezequiel Umanzor;
3. Revoking or suspending Smog Check, Test-Only, Station License Number TC 306766, issued to Marlon Ezequiel Umanzor, dba Smogway;
4. Revoking or suspending Smog Check Inspector License Number EO 644692, issued to Marlon Ezequiel Umanzor;
5. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health & Saf. Code in the name of Marlon Ezequiel Umanzor;
6. Ordering Marlon Ezequiel Umanzor, dba Smogway and individually, 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,
7. Taking such other and further action as deemed necessary and proper.

DATED: As of digital signature date

Dorais,
Patrick@DCA
PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

Digitally signed by Dorais,
Patrick@DCA
Date: 2025.10.14 09:43:53
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