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

In the Matter of the Accusation Against**:** **E AND K SMOG LLC** **DBA E AND K SMOG CHECK** **Aaron Quy Chanh Nguyen-Member** **1320 E San Fernando St** **San Jose, CA 95116** **Automotive Repair Dealer Registration No. ARD 308159** **Smog Check Test Only Station License No. TC 308159** **ANTONIO G MANALASTAS** **4345 Victoria Ave** **Union City, CA 94587** **Smog Check Inspector License No. EO 640890** Respondents.	Case No. 79/24-21682 **ACCUSATION**

PARTIES

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

2. On or about February 5, 2024, the Bureau issued Automotive Repair Dealer Registration Number ARD 308159 to E and K Smog LLC. dba E and K Smog (Respondent E and K); Aaron Quy Chanh Nguyen-Member. The Automotive Repair Dealer Registration will expire on February 28, 2027, unless renewed.

3. On or about March 14, 2024, the Bureau issued Smog Check Test Only Station License Number TC 308159 to Respondent E and K. The Smog Check Test Only Station License will expire on February 28, 2027, unless renewed. The Smog Check Station license was STAR certified on or about August 22, 2024, and was suspended March 4, 2026.

4. On or about January 29, 2018, the Bureau issued Smog Check Inspector License Number EO 640890 to Antonio G. Manalastas (Respondent Manalastas). The Smog Check Inspector License expired on February 28, 2026, and has not been renewed.

JURISDICTION

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

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, and/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. 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.

8. 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.

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

STATUTORY PROVISIONS

10. Section 9884.7 of the Code states:

(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.

(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.

11. Section 44012 of the Health and Safety Code states:

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

. . .

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

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

13. Section 44072.2 of the Health and Safety Code states:

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

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

. . .

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

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

. . .

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

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

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.

15. Section 44072.10, of the Health and Safety Code states, in pertinent part:

. . .

(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, clean plugging, clean glassing, clean tanking, or any other fraudulent inspection practice, 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.

. . .

REGULATORY PROVISIONS

16. California Code of Regulations, title 16, section 3340.1, states:

. . .

"Clean plugging" means using a substitute vehicle's OBD system, or another source, to generate data readings or diagnostic information in order to cause the OIS to issue a certificate of compliance for the test vehicle.

. . .

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

(a) Any disciplinary or reinstatement proceeding under this article involving licensed stations, licensed technicians, or fleet owners licensed pursuant to section 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.

. . .

(c) 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.

. . .

18. 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.

. . .

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

. . .

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

. . .

(h) No licensed station shall have in the approved testing area at any time any electronic device 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.

. . .

20. 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.

21. 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.

COST RECOVERY

22. 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

23. California's Smog Check Program identifies motor vehicles with excess emissions so they can be properly repaired or retired. The program has greatly reduced air pollution and helped improve the health of many Californians.

24. 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 BAR.

25. 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).

26. 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.

27. BAR implemented a statewide change requiring the use of the On-Board Diagnostic Inspection System (BAR-OIS) instead of the EIS for the smog testing of 2000 model year and newer gas powered and 1998 and newer diesel vehicles.

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

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

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

31. PIDs are data points reported by the vehicle on-board computer to a scan tool or BAR-OIS. Examples of PIDs are engine speed, mass air flow, manifold absolute pressure, engine temperature, and other input and output values utilized by the vehicle's on-board computer.

32. eVINs may be identified multiple times during the BAR-OIS smog inspection. A vehicle's eVin is identified by the BAR-OIS during both the static portion of the OBD II test and during the dynamic portion of the OBD II test. A vehicle's eVIN will not change between the static and dynamic portion of the OBD II test.

33. BAR can access the VID to view test data on smog check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested.

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

a. Engine speed in revolutions per minute (RPM),

b. Throttle position as measured by a throttle position sensor (TPS) mounted onto the throttle shaft. The throttle position is measured in a percentage of opening from 0% at idle to up to 100% at full throttle.

c. Manifold absolute pressure as measured by a manifold air pressure sensor (MAP) connected to an intake manifold source, measured in kilo pascals (kpa). Typical readings for a normally aspirated vehicle are as follows: 0 kpa being absolute vacuum, 25kpa to 45kpa at idle, and 101 kpa at full throttle (atmospheric pressure at sea level).

d. Mass air flow as measured by a mass air flow sensor (MAF) mounted in the engine's air intake tract. Air flow is measured in grams per second (gps).

35. During normal engine operation at idle, engine speed is relatively steady around its target idle speed. With the engine idling, the TPS is steady and at or near 0%. The MAP and/or MAF readings are also steady. For the engine speed to increase, the throttle would have to be opened to increase airflow through the engine. The engine's management systems supply fuel and spark timing appropriate to any changes in throttle position and engine speed. An increase in throttle, measured by the TPS, which increases engine RPM, would result in a corresponding increase in MAF as well as a change in MAP.

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

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

38. The BAR initiated an investigation of Respondent's smog check station E and K Smog. The investigation revealed Respondent Manalastas personally performed 33 smog inspections using clean-plugging methods at E and K Smog. Respondent E and K issued 33 certificates of compliance to the clean plugged vehicles.

39. A BAR representative closely reviewed data for the clean-plugged vehicles inspected and certified by Respondents. The data revealed that vehicles that were purportedly tested by Respondents were not and could not have been connected to the DAD during the entire portion of the OBD II inspection.

40. For 11 of the vehicles the review showed a pattern of vehicles being certified with engine operating parameters not corresponding to normal engine operation. Those vehicles received smog certificates but were not tested during the OBD II functional test. Respondent Manalastas personally performed each of the inspections at Respondent E and K's Smog Check Station. Respondent E and K issued a certificate of compliance to each fraudulently inspected vehicle. The results of those inspections are as follows.

Clean Plug 1:

41. On or about December 6, 2024, Respondents issued smog certificate # JB541065C to a 2002 Chevrolet Camaro Z28. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

42. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Chevrolet Camaro Z28 show between time stamp 126 and 18202 engine speed is steady at around 700 RPM. During this time the throttle is fixed at 0% opening. The MAP is fixed at 31kpa. The MAF is also fixed at 7.03gps. Between time stamp 18510 and 34877 the engine speed is accelerated then held steady

at around 1775 RPM. During the steady elevated engine RPM, the throttle is fixed at 0% opening. The MAP is fixed at 31kpa. The MAF is also fixed at 7.03gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, MAP and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 2:

43. On or about on December 6, 2024, Respondents issued smog certificate # JB541067C to a 2005 Mitsubishi Lancer Evolution. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

44. The Dynamic OBD Data and Dynamic Data Charts for the 2005 Mitsubishi Lancer Evolution show between time stamp 216 and 19866 engine speed is steady at around 700 RPM. During this time the throttle is fixed at 0.4% opening. The MAP is fixed at 31kpa. The MAF is also fixed at 3.25gps. Between time stamp 20327 and 36544 the engine speed is accelerated then held steady at around 1450 RPM. During the steady elevated engine RPM, the throttle is fixed at 0.4% opening. The MAP is fixed at 31kpa. The MAF is also fixed at 3.25gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, MAP and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 3:

45. On or about December 6, 2024, Respondents issued smog certificate # JB541072C to a 2002 Pontiac Firebird Formula. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

46. The Dynamic OBD Data and Dynamic Data Charts for the 2002 Pontiac Firebird Formula show between time stamp 162 and 19078 engine speed is steady at around 625 RPM. During this time the throttle is fixed at 0.8% opening. The MAP is fixed at 36kpa. The MAF is also fixed at 6.03gps. Between time stamp 19498 and 35749 the engine speed is accelerated then

held steady at around 1400 RPM. During the steady elevated engine RPM, the throttle is fixed at 0.8% opening. The MAP is fixed at 36kpa. The MAF is also fixed at 6.03gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, MAP and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 4:

47. On or about December 6, 2024, Respondents issued smog certificate # JB541075C to a 2004 Cadillac CTS-V. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

48. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Cadillac CTS-V show between time stamp 78 and 18871 engine speed is steady at around 650 RPM. During this time the throttle is fixed at 7.1% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 7.13gps. Between time stamp 19219 and 36571 the engine speed is accelerated then held steady at around 1450 RPM. During the steady elevated engine RPM, the throttle is fixed at 7.1% opening. The MAP is fixed at 35kpa. The MAF is also fixed at 7.13gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, MAP and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 5:

49. On or about December 6, 2024, Respondents issued smog certificate #JB541077C to a 2003 Honda Civic EX. Respondent did not perform a legitimate smog inspection on the vehicle. Respondent used an electronic defeat device to cause the OIS and Respondent to issue a fraudulent certificate of compliance to this vehicle.

50. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Honda Civic EX show between time stamp 334 and 19614 engine speed is steady at around 600 RPM. During this time the throttle is fixed at 9.4% opening. The MAP is fixed at 25kpa. Between time stamp 20091 and 36682 the engine speed is accelerated then held steady at around 1400 RPM. During

the steady elevated engine RPM, the throttle is fixed at 9.4% opening. The MAP is fixed at 25kpa. The steady idle and steady elevated engine speeds with the associated fixed throttle position, and fixed MAP readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 6:

51. On or about December 6, 2024, Respondents issued smog certificate # JB541078C to a 2000 Toyota Avalon. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

52. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Toyota Avalon shows between time stamp 305 and 21039 engine speed is steady at around 750 RPM. During this time the throttle is fixed at 11% opening. The MAF is also fixed at 3.37gps. Between time stamp 21437 and 37003 the engine speed is accelerated then held steady at around 1350 RPM. During the steady elevated engine RPM, the throttle is fixed at 11% opening. The MAF is also fixed at 3.37gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 7:

53. On or about December 6, 2024, Respondents issued smog certificate # JB541079C to a 2000 Toyota Celica GT. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

54. The Dynamic OBD Data and Dynamic Data Charts for the 2000 Toyota Celica GT shows between time stamp 294 and 19034 engine speed is steady at around 650 RPM. During this time the throttle is fixed at 11.8% opening. The MAF is also fixed at 2.26gps. Between time stamp 19425 and 35399 the engine speed is accelerated then held steady at around 1550 RPM. During the steady elevated engine RPM, the throttle is fixed at 11.8% opening. The MAF is also fixed at 2.26gps. The steady idle and steady elevated engine speeds with the associated fixed

throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 8:

55. On or about December 6, 2024, Respondents issued smog certificate # JB541081C to a 2001 Toyota Rav4. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

56. The Dynamic OBD Data and Dynamic Data Charts for the 2001 Toyota Rav4 shows between time stamp 324 and 19735 engine speed is steady at around 675 RPM. During this time the throttle is fixed at 11.8% opening. The MAF is also fixed at 3.7gps. Between time stamp 20116 and 36967 the engine speed is accelerated then held steady at around 1450 RPM. During the steady elevated engine RPM, the throttle is fixed at 11.8% opening. The MAF is also fixed at 3.7gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 9:

57. On or about December 7, 2024, Respondents issued smog certificate # JB541086C to a 2003 Toyota Corolla. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

58. The Dynamic OBD Data and Dynamic Data Charts for the 2003 Toyota Corolla shows between time stamp 231 and 23345 engine speed is steady at around 575 RPM. During this time the throttle is fixed at 11.8% opening. The MAF is also fixed at 5.42gps. Between time stamp 23726 and 58276 the engine speed is accelerated then held steady at around 1300 RPM. During the steady elevated engine RPM, the throttle is fixed at 11.8% opening. The MAF is also fixed at 5.42gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 10:

59. On or about December 7, 2024, Respondents issued smog certificate # JB541087C to a 2005 Infiniti G35. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

60. The Dynamic OBD Data and Dynamic Data Charts for the 2005 Infiniti G35 shows between time stamp 334 and 20405 engine speed is steady at around 650 RPM. During this time the throttle is fixed at 1.6% opening. The MAF is also fixed at 3.78gps. Between time stamp 20982 and 36973 the engine speed is accelerated then held steady at around 1750 RPM. During the steady elevated engine RPM, the throttle is fixed at 1.6% opening. The MAF is also fixed at 3.78gps. The steady idle and steady elevated engine speeds with the associated fixed throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

Clean Plug 11:

61. On or about December 7, 2024, Respondents issued smog certificate # JB541097C to a 2004 Toyota Tacoma. Respondents did not perform a legitimate smog inspection on the vehicle. Respondents used an electronic defeat device to cause the OIS to issue a fraudulent certificate of compliance to this vehicle.

62. The Dynamic OBD Data and Dynamic Data Charts for the 2004 Toyota Tacoma shows between time stamp 190 and 18194 engine speed is steady at around 700 RPM. During this time the throttle is fixed at 13.3% opening. The MAF is also fixed at 4.23gps. Between time stamp 18582 and 35263 the engine speed is accelerated then held steady at around 1550 RPM. During the steady elevated engine RPM, the throttle is fixed at 13.3% opening. The MAF is also fixed at 4.23gps.

The steady idle and steady elevated engine speeds with the associated fixed throttle position, and subsequent fixed MAF readings with the same as idle speed parameters are not characteristic or expected for normal engine operation.

63. For 22 of the clean plugged vehicles the eVIN transmitted during the dynamic portion of the OBD II inspection did not match the vehicle that was being certified (VIN/Static eVIN). This means that the vehicle certified was not connected to the DAD during the dynamic portion of the OBD II inspection and hence clean plugged. The following chart shows the vehicle certified, the date of the certification, the Certification number, and the VINs transmitted:

Date	Vehicle	DMV VIN/ Static eVIN	Dynamic eVIN	Certificate ID#
12/6/2024	2012 Dodge Journey	3C4PDCBG2CT186971	WBAFR7C50DC821956	JB541080C
12/7/2024	2007 Mercedes-Benz E350	WDBUF56X67B090673	WBAFR7C50DC821956	JB541092c
12/7/2024	2014 Ford Fusion	3FA6P0H71ER301462	WBAFR7C50DC821956	JB541094c
12/8/2024	2009 Pontiac G8 GT	6G2EC57Y49L204969	JTHBL46F685053673	JB541098c
12/8/2024	2007 Cadillac Escalade	1GYEC63867R366806	JTHBL46F685053673	UI025651C
12/8/2024	2006 Jeep Commander	1J8HG48N76C173262	JTHBL46F685053673	UI025652C
12/8/2024	2013 Ford Focus	1FADP3F20DL343330	JTHBL46F685053673	UI025657C
12/9/2024	2008 BMW 5501	WBANW53588CT53487	WBAPH5G54BNM73912	UI025658C
12/9/2024	2008 BMW 5281	WBANU53508CT19081	WBAPH5G54BNM73912	UI025659C
12/9/2024	2006 Toyota Tundra	5TBRU341X6S468333	JTHBL46F685053673	UI025665C
12/10/2024	2007 Ford F-150	1FTPX14547FA43415	JTHBL46F685053673	UI025672C
12/10/2024	2008 Dodge Charger	2B3KA43G08H143433	JTHBL46F685053673	UI025680C
12/11/2024	2008 Honda Accord	1HGCP26828A005788	JHLRE48528C073450	UI025682C
12/11/2024	2008 Honda Odyssey	5FNRL382X8B081978	JHLRE48528C073450	UI025683C
12/11/2024	2007 Jeep Patriot	1J8FF28W37D341904	JTHBL46F685053673	UI025684C
12/11/2024	2008 Nissan Sentra	3N1AB61E38L709647	JTHBL46F685053673	UI025695C
12/12/2024	2013 BMW X3 XDrive28I	5UXWX9C5XD0A31409	JTHBL46F685053673	UI025700C

12/13/2024	2009 Ford Econoline E150	1FTNE14W89DA84747	JTHBL46F685053673	Ul128055C
12/13/2024	2007 Chevrolet Silverado C1500	2GCEC13J371512972	1GNEC03088R175524	Ul128060C
12/13/2024	2010 Chevrolet Camaro	2G1FB1EV5A9154900	1GNEC03088R175524	Ul128062C
12/14/2024	2005 Saturn ION	1G8AG52F85Z111326	1GNEC03088R175524	Ul128071C
12/14/2024	2008 Ford F150	1FTRW14W88KE91492	JTHBL46F685053673	Ul128076C

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements - Registration)

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

SECOND CAUSE FOR DISCIPLINE

(Fraud - Registration)

65. Respondent E and K has subjected its Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in the Smog Program and Clean Plugging Allegations.

THIRD CAUSE FOR DISCIPLINE

(False or Misleading Records-Registration)

66. Respondent E and K has subjected its Automotive Repair Dealer Registration to discipline under Code section 9884.7, subdivision (a)(6), in that he violated California Code of Regulations, title 16, section 3373, by creating and issuing false or misleading certificates of

compliance and vehicle inspection reports for the vehicles that were clean plugged as set forth above in the Smog Program and Clean Plugging Allegations. The certificates and inspection reports indicated the vehicles were tested in accordance with all Bureau requirements and the vehicles were qualified to receive certificates of compliance. This was false as the vehicles were clean plugged.

FOURTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit – Smog Station License)

67. Respondent E and K has subjected its Smog Check Station License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivision (d), in that it committed acts involving dishonesty, fraud or deceit, whereby another was injured by issuing electronic certificates of compliance for vehicles without performing bona fide inspections of the emission control devices and systems on the vehicles, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program. Respondent E and K clean-plugged multiple vehicles as set forth above in the Smog Program and Clean Plugging Allegations above.

FIFTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program- Smog Station License)

68. Respondent E and K has subjected its Smog Check Station License to discipline under Health and Safety Code sections 44072.10 and/or 44072.2, subdivisions (a) and (c), in that it violated sections of that Code and applicable regulations, through conduct described in the Smog Program and Clean Plugging Allegations, as follows:

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

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

d. **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.

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

f. **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.

SIXTH CAUSE FOR DISCIPLINE

(Dishonesty, Fraud or Deceit-Smog Check Inspector License)

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

SEVENTH CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program- Smog Check License)

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

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

b. **Section 44032**: Respondent failed to ensure that smog inspections were performed on vehicles in accordance with procedures prescribed in Section 44012.

c. **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.

d. **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.

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

f. **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.

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

h. **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.

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

OTHER MATTERS

71. 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 E and K upon a finding that Respondent E and K has, or is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to an automotive repair dealer.

72. Pursuant to Health & Safety Code section 44072.8, if Respondent E and K's Smog Check Station 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.

73. Pursuant to Health & Safety Code section 44072.8, if Respondent Manalastas's 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 308159, issued to E and K Smog LLC;

2. Revoking or suspending Smog Check Test Only Station License Number TC 308159 issued to E and K Smog LLC;

3. Revoking or suspending any additional Automotive Repair Dealer Registration(s) issued to E and K Smog LLC;

4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to E and K Smog LLC;

5. Revoking or suspending Smog Check Inspector License Number EO 640890, issued to Antonio G. Manalastas;

6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code to Antonio G. Manalastas;

7. Ordering E and K Smog LLC 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;

8. Ordering Antonio G. Manalastas 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,

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

DATED: As of Digital Signature Date

Dorais, Patrick@DCA

Digitally signed by Dorais, Patrick@DCA
Date: 2026.03.11 16:52:26 -07'00'

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

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