

1 XAVIER BECERRA
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
4 State Bar No. 261887
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804
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. 79/15-10444

13 **JOSEFINA LUX dba J.R. SMOG TEST ONLY**

A C C U S A T I O N

14 395 N. Waterman Ave.
15 San Bernardino, CA 92410

16 Automotive Repair Dealer Registration No. ARD
275918
17 Smog Check Test Only Station License No. TC
275918

18 **and**

19 **JESUS FAUSTO JR.**
20 976 E. Olive St., Apt. E
San Bernardino, CA 92410

21 Smog Check Inspector License No. EO 636986
22

23 Respondents.
24

25 Complainant alleges:

26 **PARTIES**

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

STATUTORY PROVISIONS

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

(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, 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.

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

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

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

///

///

///

1 13. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

8

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

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

13 14. Health & Saf. Code section 44072.10 states, in pertinent part:

14

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

19

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

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

25 **REGULATORY PROVISIONS**

26 16. California Code of Regulations (CCR), title 16, section 3340.15, subdivision (h),
27 prohibits a licensed smog check station from subletting inspections or repairs required as part of
28 the Smog Check Program.

17 17. CCR, title 16, section 3340.24, subdivision (c), states:

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

21 ///

1 18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
2 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section
3 44012 of the Health & Saf. Code, section 44035 of the Health & Saf. Code, and section 3340.42
4 of this article.”

5 19. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
6 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
7 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
8 this article and has all the required emission control equipment and devices installed and
9 functioning correctly.”

10 20. CCR, title 16, section 3340.41, subdivision (c), states that “[n]o person shall enter
11 into the emissions inspection system any vehicle identification information or emission control
12 system identification data for any vehicle other than the one being tested. Nor shall any person
13 knowingly enter into the emissions inspection system any false information about the vehicle
14 being tested.”

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

17 **COST RECOVERY**

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

VID DATA REVIEW

1
2 23. On March 9, 2015, the Bureau implemented a policy change requiring the use of
3 an On-Board Diagnostic Inspection System (OIS) in testing of 2000 model year and newer gas
4 powered vehicles 14,000 Gross Vehicle Weight Rating (GVW) and under, and 1998 and newer
5 diesel powered vehicles 14,000 GVW and under. The OIS Bureau Test Data lists differences in
6 Vehicle Identification Numbers (VIN) for vehicles that have received smog inspections, in
7 addition to communication protocol (the language used to communicate) and Parameter ID (PID)
8 differences with vehicles that have been certified correctly that are the same make and model
9 vehicles.

10 24. In June of 2015, Bureau representative Alfred Denno initiated an investigation in
11 which he reviewed OIS test data for J. R. Smog Test Only. Representative Denno’s investigation
12 revealed that the data related to certain vehicles certified by J. R. Smog Test Only contained a
13 pattern of unmistakable discrepancies between the information transmitted during the inspections
14 and documented information known about the subject vehicles. Specifically, Representative
15 Denno compared the data received from the certified vehicles to data from vehicles of the same
16 year, make, and model and determined that the data from at least eight (8) of the certified vehicles
17 all contained the following unmistakable discrepancies: (1) missing eVINs; (2) incorrect vehicle
18 communication protocols; and (3) incorrect PID counts. These documented discrepancies
19 confirm that these eight (8) vehicles receiving smog certificates from J. R. Smog Test Only were
20 fraudulently tested during the smog inspection using the “clean plugging” method.¹ The
21 following chart illustrates the documented clean plugging activities of Respondents between
22 March 30, 2015, and July 24, 2015.

23 ///

24 ///

25 ///

26 _____
27 ¹ “Clean plugging” refers to the use of another vehicle’s properly functioning On Board
28 Diagnostic, generation II, (OBD II) system, or another source, to generate passing diagnostic
readings for the purpose of issuing fraudulent smog Certificates of Compliance to vehicles that
are not in smog compliance and/or not present for testing.

Test Date	Vehicle Certified & License No.	Certificate No.	Techician License No.	OIS Test Data Details
03/30/2015	2001 Chevrolet Tahoe C1500 6WLP157	YP419331C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: JVPW) PID Count: 9 (expected: 22 or 23) eVIN Missing
03/31/2015	2005 Dodge Magnum R/T 5EZN863	YP419333C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: ICAN11bt5) PID Count: 8 (expected: 6 43) eVIN Missing
04/01/2015	2001 Ford F150 8Z97081	YP419341C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: JPWM) PID Count: 9 (expected: 20) eVIN Missing
04/06/2015	2002 GMC Yukon XL C1500 5UKB163	YP896554C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: JVPW) PID Count: 9 (expected: 22) eVIN Missing
05/19/2015	2000 Pontiac Grand AM SE1 4SXU509	PQ913379C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected JVPW) PID Count: 10 (expected 16) eVIN Missing

1	05/27/2015	2004 Cadillac Seville SLS N	PS183957C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: JVPW) PID Count: 10 (expected: 23) eVIN Missing
2					
3					
4					
5	06/01/2015	2004 Ford Escape XLT 5YRY730	PS183982C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: JPWM) PID Count: 10 (expected: 22) eVIN Missing
6					
7					
8					
9					
10	07/24/2015	2007 Pontiac G6/Value Leader 5ZVR157*	PS905222C	EO636986 (Respondent Fausto)	Comm. Protocol: I9140808 (expected: ICAN11bt500) PID Count: 11 (expected: 7 38) eVIN Missing
11					
12					
13					
14					

15 * This vehicle was previously tested and failed at another smog check station on July 17, 2015.
 16 The OIS Test Detail for that test indicated the vehicle reported the eVIN, reported the
 17 communication protocol as ICAN11bt500, and reported a PID count of 38, all as expected.

18 25. The data analysis conducted on J. R. Smog Test Only between March 30, 2015,
 19 and July 24, 2015, shows that Respondents participated in a scheme to perform at least eight (8)
 20 fraudulent Smog Check inspections resulting in the issuance of eight (8) fraudulent electronic
 21 Smog Check Certificates of Compliance.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **SURVEILLANCE OPERATION**

2 26. On June 10, 2015, representatives of the Bureau conducted a video
3 surveillance operation of Respondent Lux's smog check facility. The surveillance video and
4 information obtained from the Bureau's vehicle information database showed that Respondent
5 Fausto employed a method commonly known as clean piping² during the following smog
6 inspection, resulting in the issuance of a fraudulent certificate of compliance for the following
7 vehicle:

8 Date & Time of Inspection	Vehicle in Emission Inspection System (EIS) Data and License No.	Vehicle Actually Tested	Certificate No.
9 06/10/2015	10 1991 Chevrolet C2500 Pickup	Jaguar S-Type	YR852225C
11 1617-1642	4G89955	78862N1	

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Untrue or Misleading Statements)**

14 27. Respondent Lux's Automotive Repair Dealer Registration is subject to disciplinary
15 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that she made or
16 authorized statements which she knew or in the exercise of reasonable care should have known to
17 be untrue or misleading when she issued electronic certificates of compliance to the 9 vehicles
18 listed above in paragraphs 24 and 26, certifying those vehicles as being in compliance with
19 applicable laws and regulations when, in fact, those vehicles had not been properly inspected.
20 Respondent did not inspect any of the 9 vehicles as required by Health & Saf. Code section
21 44012. Complainant refers to, and by this reference incorporates, the allegations contained in
22 paragraphs 24 through 26, above, as though set forth fully herein.

23 ///

24 ///

25 _____
26 ² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of
27 another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in
28 compliance or are not present in the smog check area during the time of the certification.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Fraud)**

3 28. Respondent Lux's Automotive Repair Dealer Registration is subject to disciplinary
4 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that she committed
5 acts that constitute fraud by issuing electronic smog certificates of compliance for the 9 vehicles
6 identified in paragraphs 24 and 26 above, without performing bona fide inspections of the
7 emission control devices and systems on the vehicles, thereby depriving the People of the State of
8 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
9 refers to, and by this reference incorporates, the allegations contained in paragraphs 24 through
10 26, above, as though set forth fully herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

13 29. Respondent Lux's Automotive Repair Dealer Registration is subject to disciplinary
14 action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that she failed in a
15 material respect to comply with the provisions of this chapter or regulations adopted pursuant to it
16 when she issued electronic certificates of compliance for the 9 vehicles identified in paragraphs
17 24 and 26 above, without performing bona fide inspections of the emission control devices and
18 systems on those vehicles, thereby depriving the People of the State of California of the
19 protection afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this
20 reference incorporates, the allegations contained in paragraphs 24 through 26, above, as though
21 set forth fully herein.

22 **FOURTH CAUSE FOR DISCIPLINE**

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

24 30. Respondent Lux's Smog Check Test Only Station License is subject to disciplinary
25 action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that she failed to
26 comply with the following sections of that Code:

27 ///

28 ///

1 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
2 performed on the 9 vehicles identified in paragraphs 24 and 26 above, in accordance with
3 procedures prescribed by the department.

4 b. **Section 44015, subdivision (b):** Respondent issued electronic smog certificates of
5 compliance for the 9 vehicles identified in paragraphs 24 and 26 above, without ensuring that the
6 vehicles were properly tested and inspected to determine if they were in compliance with Health
7 & Saf. Code section 44012.

8 Complainant refers to, and by this reference incorporates, the allegations contained in
9 paragraphs 24 through 26, above, as though set forth fully herein.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations Pursuant**
12 **to the Motor Vehicle Inspection Program)**

13 31. Respondent Lux's Smog Check Test Only Station License is subject to disciplinary
14 action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that she failed to
15 comply with provisions of California Code of Regulations, title 16, as follows:

16 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
17 electronic smog certificates of compliance for the 9 vehicles identified in paragraphs 24 and 26
18 above.

19 b. **Section 3340.35, subdivision (c):** Respondent issued electronic smog certificates of
20 compliance for the 9 vehicles identified in paragraphs 24 and 26 above, even though the vehicles
21 had not been inspected in accordance with section 3340.42.

22 c. **Section 3340.41, subdivision (c):** Respondent knowingly entered false information
23 into the emissions inspection system for the 9 vehicles identified in paragraphs 24 and 26 above.

24 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
25 conducted on the 9 vehicles identified in paragraphs 24 and 26 above, in accordance with the
26 Bureau's specifications.

27 Complainant refers to, and by this reference incorporates, the allegations contained in
28 paragraphs 24 through 26, above, as though set forth fully herein.

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 32. Respondent Lux's Smog Check Test Only Station License is subject to disciplinary
4 action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that she committed
5 dishonest, fraudulent, or deceitful acts whereby another was injured by issuing electronic smog
6 certificates of compliance for the 9 vehicles identified in paragraphs 24 and 26 above, without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
10 allegations contained in paragraphs 24 through 26, above, as though set forth fully herein.

11 **SEVENTH CAUSE FOR DISCIPLINE**

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

13 33. Respondent Fausto's Smog Check Inspector License is subject to disciplinary action
14 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
15 section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
16 emission control tests on the 9 vehicles identified in paragraphs 24 and 26 above, in accordance
17 with procedures prescribed by the department. Complainant refers to, and by this reference
18 incorporates, the allegations contained in paragraphs 24 through 26, above, as though set forth
19 fully herein.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **EIGHTH CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Regulations Pursuant
3 to the Motor Vehicle Inspection Program)

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

7 a. **Section 3340.24, subdivision (c)**: Respondent falsely or fraudulently issued
8 electronic smog certificates of compliance for the 9 vehicles identified in paragraphs 24 and 26
9 above.

10 b. **Section 3340.30, subdivision (a)**: Respondent failed to inspect and test the 9
11 vehicles identified in paragraphs 24 and 26 above, in accordance with Health & Saf. Code
12 sections 44012 and 44035, and California Code of Regulations, title 16, section 3340.42.

13 c. **Section 3340.41, subdivision (c)**: Respondent knowingly entered false information
14 into the emissions inspection system for the 9 vehicles identified in paragraphs 24 and 26 above.

15 d. **Section 3340.42**: Respondent failed to conduct the required smog tests on the 9
16 vehicles identified in paragraphs 24 and 26 above, in accordance with the Bureau's specifications.

17 Complainant refers to, and by this reference incorporates, the allegations contained in
18 paragraphs 24 through 26, above, as though set forth fully herein.

19 **NINTH CAUSE FOR DISCIPLINE**

20 (Dishonesty, Fraud or Deceit)

21 35. Respondent Fausto's Smog Check Inspector License is subject to disciplinary action
22 pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that he committed dishonest,
23 fraudulent, or deceitful acts whereby another was injured by issuing electronic smog certificates
24 of compliance for the 9 vehicles identified in paragraphs 24 and 26 above, without performing
25 bona fide inspections of the emission control devices and systems on the vehicles, thereby
26 depriving the People of the State of California of the protection afforded by the Motor Vehicle
27 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations
28 contained in paragraphs 24 through 26, above, as though set forth fully herein.

1 **ELEVENTH CAUSE FOR DISCIPLINE**

2 **(Criminal Conviction)**

3 36. Respondent Fausto has subjected his Smog Check Inspector License to discipline
4 under Health & Saf. Code section 44072.2, subdivision (b), in that on or about February 8, 2017,
5 in the criminal matter entitled *The People of the State of California v. Jesus Fausto, Jr.* (Super.
6 Ct. San Bernardino, 2016, No. FSB1600044), Respondent entered a plea of guilty and was
7 convicted of one count of violating Penal Code section 502, subdivision (c) [computer access and
8 fraud], a felony. Respondent Fausto was sentenced to 3 years formal probation on terms and
9 conditions. The circumstances surrounding the conviction are set forth in paragraphs 24 through
10 26 above, and are incorporated by this reference as though set forth fully herein.

11 **OTHER MATTERS**

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

16 38. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
17 License No. TC 275918, issued to Respondent Lux, is revoked or suspended, any additional
18 license issued under this chapter in the name of said licensee may be likewise revoked or
19 suspended by the director.

20 39. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
21 No. EO 636986, issued to Respondent Fausto, is revoked or suspended, any additional license
22 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
23 the director.

24 ///

25 ///

26 ///

27 ///

28 ///

1 PRAYER

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

4 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 275918,
5 issued to Josefina Lux dba J. R. Smog Test Only;

6 2. Revoking or suspending any other automotive repair dealer registration issued to
7 Josefina Lux;

8 3. Revoking or suspending Smog Check Test Only Station License No.
9 TC 275918, issued to Josefina Lux dba J. R. Smog Test Only;

10 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
11 Division 26 of the Health and Safety Code in the name of Josefina Lux;

12 5. Revoking or suspending Smog Check Inspector License No. EO 636986, issued to
13 Jesus Fausto Jr.;

14 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
15 Division 26 of the Health and Safety Code in the name of Jesus Fausto Jr.;

16 7. Ordering Josefina Lux dba J. R. Smog Test Only and Jesus Fausto Jr. to pay the
17 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
18 case, pursuant to Business and Professions Code section 125.3; and

19 8. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED:

October 4, 2017 *Patrick Dorais*

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

23
24
25
26 LA2015603876
27 52524506.docx
28