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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. 79/15-2614

13 **SANCHEZ SMOG; OLGA LIDIA**
14 **SANCHEZ - OWNER**
2106 E. California Avenue
15 Bakersfield, CA 93307
6607 River Grove Street
16 Bakersfield, CA 93308
Automotive Repair Dealer Registration No.
17 ARD 280377
Smog Check, Test Only, Station License No.
18 TC 280377

ACCUSATION

19 and

20
21 **BRIAN MICHAEL SMITH**
12001 Childress Street
22 Bakersfield, CA 93312
Licensed Smog Check Inspector No.
23 EO638187

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 **Automotive Repair Dealer Registration**

6 2. On or about May 29, 2015, the Bureau of Automotive Repair issued Automotive
7 Repair Dealer Registration Number ARD 280377 to Sanchez Smog, Olga Lidia Sanchez
8 (“Respondent Sanchez Smog”). The Automotive Repair Dealer Registration expired on May 31,
9 2016, and has not been renewed.

10 **Smog Check Station**

11 3. On or about July 1, 2015, the Bureau of Automotive Repair issued Smog Check, Test
12 Only, Station License Number TC 280377 to Respondent Sanchez Smog. The Smog Check, Test
13 Only, Station License expired on May 31, 2016, and has not been renewed.

14 **Technician License**

15 4. On or about May 26, 2015, the Bureau of Automotive Repair issued Smog Check
16 Inspector License Number EO 638187 to Brian Michael Smith (“Respondent Smith”). The Smog
17 Check Inspector License was in full force and effect at all times relevant to the charges brought
18 herein and will expire on June 30, 2017, unless renewed.

19 **JURISDICTION**

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

23 6. Business and Professions Code (“ Bus. & Prof. Code”) section 9884.7 provides that
24 the Director may revoke an automotive repair dealer registration.

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

1 business operated in this state by an automotive repair dealer upon
2 a finding that the automotive repair dealer has, or is, engaged in a
3 course of repeated and willful violations of this chapter, or
4 regulations adopted pursuant to it.

5 12. Health & Saf. Code section 44012 provides, in pertinent part, that tests at smog check
6 stations “shall be performed in accordance with procedures prescribed by the department”

7 13. Health & Saf. Code section 44015, subdivision (b), provides that a certificate of
8 compliance shall be issued if a vehicle meets the requirements of Health & Saf. Code section
9 40012.

10 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

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

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

23 15. Health & Saf. Code section 44072.10 states, in pertinent part:

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

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

16. 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.

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1 **REGULATORY PROVISIONS**

2 17. CCR, title 16, section 3340.24, subdivision (c), provides that “[t]he bureau may
3 suspend or revoke the license of or pursue other legal action against a licensee, if the licensee
4 falsely or fraudulently issues or obtains a certificate of compliance or a certificate of
5 noncompliance.”

6 18. CCR, title 16, section 3340.30, subdivision (a), states that a licensed smog technician
7 shall at all times “[i]nspect, test and repair vehicles, as applicable, in accordance with section
8 44012 of the Health and Safety Code, section 44035 of the Health and Safety Code, and section
9 3340.42 of this article.”

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

15 20. 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 21. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
22 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
23 included in a stipulated settlement.

24 **BACKGROUND**

25 22. Respondents have engaged in numerous acts or omissions constituting violations of
26 the Automotive Repair Act (Business and Professions Code section 9880, *et. seq.*) and Motor
27 Vehicle Inspection Program (Health and Safety Code section 44000, *et. seq.*) through their
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1 commission of multiple instances of “clean plugging.”¹ The facts and circumstances surrounding
2 Respondents’ clean plugging activities are summarized as follows:

3 23. In March 2016, a representative of the Bureau conducted a detailed review of the VID
4 data for Smog Check inspections performed at Respondent Sanchez Smog. The data obtained in
5 connection with this investigation revealed anomalies consistent with fraudulent Smog Check
6 activities. Specifically, the review showed a pattern of different vehicles being certified with the
7 same eVIN. The data for the vehicles certified also contains a different communication protocols
8 and different PID amounts. This confirms that the vehicles receiving smog certificates were not
9 tested during the OBD functional test and that another vehicle was used, which constitutes clean
10 plugging. An in depth analysis of the data revealed that there were a total of ten (10) Smog Check
11 Certificates of Compliance that were fraudulently issued to vehicles using the clean plugging
12 method. The following chart (Table 1) illustrates the documented clean plugging activities of
13 Respondents between September 11, 2015 through January 24, 2016:

14	15	16	17	18
Test Date	Vehicle Certified & VIN No.	Certificate No.	Details*	
09/11/2015	2001 BMW 325I WBAAV33461FU80790	YT991341C	Test data does not support this vehicle.	
09/14/15	2002 Lexus IS 300 JTHBD192120058014	YT991345C	Test data does not support this vehicle.	
09/17/15	2005 Chevrolet Silverado K2500HD 1GCHK23295F959844	PW606903C	Test data does not support this vehicle.	
09/28/15	2000 Chevrolet Venture Luxury 1GNDX13E1YD363557	PW606914C	Test data does not support this vehicle.	

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¹ Clean plugging refers to the use of another vehicle’s properly functioning On Board 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 & VIN No.	Certificate No.	Details*
10/05/15	2001 Lincoln LS 1LNHM86S11Y674008	PW606918C	Test data does not support this vehicle.
10/11/15	2005 Honda Accord LX 1HGCM56405A127519	PW606926C	Test data does not support this vehicle.
10/11/15	2006 Toyota Camry Solara SE/SLE 4T1CA38P06U072133	PW606927C	Test data does not support this vehicle.
11/06/15	2004 Dodge Grand Caravan SE 1D4GP24R84B545987	PY964104C	Test data does not support this vehicle.
01/24/16	2002 Toyota Camry LE/XLE/SE 4T1BE32K72U061430	YV676164C	Test data does not support this vehicle.
01/24/16	2005 Chevrolet Silverado C1500 2GCEC13T751101749	YV676165C	Test data does not support this vehicle.

*All vehicles were inspected and certified by Respondent Smith, Technician EO638187.

24. The data analysis conducted between September 11, 2015 through January 24, 2016, shows that Respondents participated in a scheme to perform at least ten (10) fraudulent Smog Check inspections resulting in the issuance of ten (10) fraudulent electronic Smog Check Certificates of Compliance.

FIRST CAUSE FOR DISCIPLINE

(Untrue or Misleading Statements – Respondent Sanchez Smog)

25. Respondent Sanchez Smog’s Automotive Repair Dealer Registration is subject to disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that Respondent Sanchez Smog made or authorized statements which she knew or in the exercise of reasonable care should have known to be untrue or misleading, as follows: Respondent Sanchez Smog certified that the 10 vehicles identified in paragraph 23 above, passed inspection and were in compliance with applicable laws and regulations. In fact, Respondent Sanchez Smog

1 conducted the inspections on the vehicles using clean plugging methods in that it substituted or
2 used a different vehicle(s) during the OBD II functional tests in order to issue smog certificates of
3 compliance for the vehicles, and did not test or inspect the vehicles as required by Health & Saf.
4 Code section 44012. Complainant refers to, and by this reference incorporates, the allegations
5 contained in paragraph 23, as though set forth fully herein.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Fraud – Respondent Sanchez Smog)**

8 26. Respondent Sanchez Smog’s Automotive Repair Dealer Registration is subject to
9 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that
10 Respondent Sanchez Smog committed acts that constitute fraud by issuing electronic smog
11 certificates of compliance for the 10 vehicles identified in paragraph 23 above, without
12 performing bona fide inspections of the emission control devices and systems on the vehicles,
13 thereby depriving the People of the State of California of the protection afforded by the Motor
14 Vehicle Inspection Program. Complainant refers to, and by this reference incorporates, the
15 allegations contained in paragraph 23, as though set forth fully herein.

16 **THIRD CAUSE FOR DISCIPLINE**

17 **(Material Violation of Automotive Repair Act – Respondent Sanchez Smog)**

18 27. Respondent Sanchez Smog subjected her Automotive Repair Dealer Registration to
19 discipline under Bus. & Prof. Code section 9884.7, subdivision (a)(6), in that Respondent
20 Sanchez Smog failed in a “material respect to comply with the provisions of this chapter or
21 regulations adopted pursuant to it” when she issued electronic certificates of compliance for the
22 10 vehicles identified in paragraph 23 above, without performing bona fide inspections of the
23 emission control devices and systems on those vehicles, thereby depriving the People of the State
24 of California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
25 refers to, and by this reference incorporates, the allegations contained in paragraph 23, as though
26 set forth fully herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Violations of the Motor Vehicle Inspection Program – Respondent Sanchez Smog)**

3 28. Respondent Sanchez Smog’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 she
5 failed to comply with the following sections of that Code:

6 a. Health & Saf. Code section 44012: Respondent Sanchez Smog failed to ensure that
7 the emission control tests were performed on the 10 vehicles identified in paragraph 23 above, in
8 accordance with procedures prescribed by the department.

9 b. Health & Saf. Code section 44015: Respondent Sanchez Smog issued electronic
10 smog certificates of compliance for the 10 vehicles identified in paragraph 23 above, without
11 ensuring that the vehicles were properly tested and inspected to determine if they were in
12 compliance with Health & Saf. Code section 44012.

13 Complainant refers to, and by this reference incorporates, the allegations contained in
14 paragraph 23, as though set forth fully herein.

15 **FIFTH CAUSE FOR DISCIPLINE**

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

18 29. Respondent Sanchez Smog’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
20 Respondent Sanchez Smog failed to comply with provisions of California Code of Regulations,
21 title 16, as follows:

22 a. CCR, title 16, section 3340.24, subdivision (c): Respondent Sanchez Smog falsely or
23 fraudulently issued electronic smog certificates of compliance for the 10 vehicles identified in
24 paragraph 23 above.

25 b. CCR, title 16, section 3340.35, subdivision (c): Respondent Sanchez Smog issued
26 electronic smog certificates of compliance for the 10 vehicles identified in paragraph 23 above,
27 even though the vehicles had not been inspected in accordance with section 3340.42.

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1 c. CCR, title 16, section 3340.42: Respondent Sanchez Smog failed to ensure that the
2 required smog tests were conducted on the 10 vehicles identified in paragraph 23 above, in
3 accordance with the Bureau's specifications.

4 Complainant refers to, and by this reference incorporates, the allegations contained in
5 paragraph 23, as though set forth fully herein.

6 **SIXTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit – Respondent Sanchez Smog)**

8 30. Respondent Sanchez Smog's Smog Check Test Only Station License is subject to
9 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that
10 Respondent Sanchez Smog committed dishonest, fraudulent, or deceitful acts whereby another
11 was injured by issuing electronic smog certificates of compliance for the 10 vehicles identified in
12 paragraph 28 above, without performing bona fide inspections of the emission control devices and
13 systems on the vehicles, thereby depriving the People of the State of California of the protection
14 afforded by the Motor Vehicle Inspection Program. Complainant refers to, and by this reference
15 incorporates, the allegations contained in paragraph 23, as though set forth fully herein.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 **(Violations of the Motor Vehicle Inspection Program – Respondent Smith)**

18 31. Respondent Smith's Smog Check Inspector License is subject to disciplinary action
19 pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that he failed to comply with
20 section 44012 of that Code in a material respect, as follows: Respondent Smith failed to perform
21 the emission control tests on the 10 vehicles identified in paragraph 23 above, in accordance with
22 procedures prescribed by the department. Complainant refers to, and by this reference
23 incorporates, the allegations contained in paragraph 23, as though set forth fully herein.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Regulations Pursuant to the Motor Vehicle Inspection Program –**
3 **Respondent Smith)**

4 32. Respondent Smith’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. CCR, title 16, section 3340.24, subdivision (c): Respondent Smith falsely or
8 fraudulently issued electronic smog certificates of compliance for the 10 vehicles identified in
9 paragraph 23 above.

10 b. CCR, title 16, section 3340.30, subdivision (a): Respondent Smith failed to
11 inspect and test the 10 vehicles identified in paragraph 23 above, in accordance with Health &
12 Saf. Code sections 44012 and 44035, and California Code of Regulations, title 16, section
13 3340.42.

14 c. CCR, title 16, section 3340.42: Respondent Smith failed to conduct the
15 required smog tests on the 10 vehicles identified in paragraph 23 above, in accordance with the
16 Bureau’s specifications.

17 Complainant refers to, and by this reference incorporates, the allegations contained in
18 paragraph 23, as though set forth fully herein.

19 **NINTH CAUSE FOR DISCIPLINE**

20 **(Dishonesty, Fraud or Deceit – Respondent Smith)**

21 33. Respondent Smith’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 10 vehicles identified in paragraph 23 above, without performing bona fide
25 inspections of the emission control devices and systems on the vehicles, thereby depriving the
26 People of the State of California of the protection afforded by the Motor Vehicle Inspection
27 Program. Complainant refers to, and by this reference incorporates, the allegations contained in
28 paragraph 23, as though set forth fully herein.

1 **OTHER MATTERS**

2 34. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
3 suspend, revoke, or place on probation the registration for all places of business operated in this
4 state by Respondent Olga Lidia Sanchez, owner of Sanchez Smog, upon a finding that she has, or
5 is, engaged in a course of repeated and willful violations of the laws and regulations pertaining to
6 an automotive repair dealer.

7 35. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station
8 License No. TC 280377, issued to Respondent Olga Lidia Sanchez, owner of Sanchez Smog, is
9 revoked or suspended, any additional license issued under this chapter in the name of said
10 licensee may be likewise revoked or suspended by the director.

11 36. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License
12 No. EO 638187, issued to Brian Michael Smith, is revoked or suspended, any additional license
13 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
14 the director.

15 **PRAYER**

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

18 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
19 280377, issued to Sanchez Smog, Olga Lidia Sanchez, owner;

20 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
21 280377, issued to Sanchez Smog, Olga Lidia Sanchez, owner;

22 3. Revoking, suspending, or placing on probation any other Automotive Repair Dealer
23 Registration issued to Olga Lidia Sanchez;

24 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
25 and Safety Code in the name of Olga Lidia Sanchez;

26 5. Revoking or suspending Smog Check Inspector License Number EO 638187, issued
27 to Brian Michael Smith;

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1 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Brian Michael Smith;

3 7. Ordering Olga Lidia Sanchez and Brian Michael Smith to pay the Bureau of
4 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
5 pursuant to Business and Professions Code section 125.3; and,

6 8. Taking such other and further action as deemed necessary and proper.
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10 DATED: February 7, 2017 Patrick Dorais

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

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