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8
9 **BEFORE THE**
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. 79/15-17692

13 **SG SMOG CHECK CENTER,**
14 **SUDARSHAN KUMAR GOSWANI,**
OWNER
15 **205 Couch Street, Suite A**
Vallejo, CA 94590

ACCUSATION
Smog Check

16 **Mailing Address:**
17 **2310 Burgundy Way**
Fairfield, CA 94533

18 **Automotive Repair Dealer Registration No.**
ARD 279298
19 **Smog Check Test Only Station License No.**
TC 279298

20 **CHERYL BASCOM POBLETE**
21 **515 Cordelia St., Apt. 3**
Suisun City, CA 94585

22 **Smog Check Inspector License No. EO**
23 **636124**

24 Respondents.

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1 Complainant alleges:

2 **PARTIES**

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

5 2. On or about February 23, 2015, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 279298 to SG Smog Check Center, Sudarshan Kumar
7 Goswani, Owner (Respondent SG Smog). The Automotive Repair Dealer Registration was in full
8 force and effect at all times relevant to the charges brought in this Accusation and will expire on
9 February 28, 2018, unless renewed.

10 3. On or about March 20, 2015, the Bureau of Automotive Repair issued Smog Check
11 Test Only Station License Number TC 279298 to Respondent SG Smog. The Smog Check Test
12 Only Station License was in full force and effect at all times relevant to the charges brought in
13 this Accusation and will expire on February 28, 2018, unless renewed.

14 4. On or about October 11, 2013, the Bureau of Automotive Repair issued Smog Check
15 Inspector License Number EO 636124 to Cheryl Bascom Poblete (Respondent Poblete). The
16 Smog Check Inspector License was in full force and effect at all times relevant to the charges
17 brought in this Accusation and will expire on February 28, 2018, unless renewed.

18 **JURISDICTION**

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

22 6. Section 9884.13 of the Business and Professions Code (Code) provides, in pertinent
23 part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction
24 to proceed with a disciplinary proceeding against an automotive repair dealer or to render a
25 decision invalidating a registration temporarily or permanently.

26 7. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
27 expiration or suspension of a license by operation of law, or by order or decision of the Director
28 of Consumer Affairs, or a court of law, or the voluntary surrender of the license, shall not deprive

1 the Director of jurisdiction to proceed with disciplinary action.

2 **STATUTORY AND REGULATORY PROVISIONS**

3 8. Section 9884.7 of the Code provides, in pertinent part:

4 “(a) The director, where the automotive repair dealer cannot show there was a bona fide
5 error, may deny, suspend, revoke, or place on probation the registration of an automotive repair
6 dealer for any of the following acts or omissions related to the conduct of the business of the
7 automotive repair dealer, which are done by the automotive repair dealer or any automotive
8 technician, employee, partner, officer, or member of the automotive repair dealer.

9 “(1) Making or authorizing in any manner or by any means whatever any statement written
10 or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable
11 care should be known, to be untrue or misleading.

12 . . .

13 “(4) Any other conduct that constitutes fraud.

14 . . .

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

19 9. Section 44012 of the Health and Safety Code requires that tests at smog check
20 stations be performed in accordance with procedures prescribed by the department.

21 10. Section 44059 of the Health and Safety Code provides, in pertinent part:

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

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1 11. Section 44072.2 of the Health and Safety Code provides, in pertinent part:

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

5 “(a) Violates any section of this chapter and the regulations adopted pursuant to it, which
6 related to the licensed activities.

7 . . .

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

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

10 12. California Code of Regulations, title 16, section 3340.24, subdivision (c) states: “The
11 bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the
12 licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of
13 noncompliance.”

14 13. California Code of Regulations, title 16, section 3340.30 provides, in pertinent part:

15 “A licensed smog check inspector and/or repair technician shall comply with the following
16 requirements at all times while licensed:

17 “(a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the
18 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this
19 article.”

20 14. California Code of Regulations, title 16, section 3340.35, subdivision (c) states: “A
21 licensed station shall issue a certificate of compliance or noncompliance to the owner or operator
22 of any vehicle that has been inspected in accordance with the procedures specified in section
23 3340.42 of this article and has all the required emission control equipment and devices installed
24 and functioning correctly.”

25 15. California Code of Regulations, title 16, section 3340.41, subdivision (c) states: “No
26 person shall enter into the emissions inspection system any vehicle identification information or
27 emission control system identification data for any vehicle other than the one being tested. Nor
28 shall any person knowingly enter into the emissions inspection system any false information about

1 the vehicle being tested.”

2 16. California Code of Regulations, title 16, section 3340.42, provides, in pertinent part:

3 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
4 methods:

5 . . .

6 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
7 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
8 The OBD test failure criteria are specified in section 3340.42.2.

9 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
10 receive the following:

11 “(1) A visual inspection of emission control components and systems to verify the vehicle’s
12 emission control systems are properly installed.”

13 17. California Code of Regulations, title 16, section 3340.45, provides, in pertinent part:

14 “(a) All Smog Check inspections shall be performed in accordance with requirements and
15 procedures prescribed in the following:

16 . . .

17 “(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This
18 manual shall become effective on or after January 1, 2013.”

19 COSTS

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

26 FACTUAL BACKGROUND

27 19. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring
28 the use of the On Board Diagnostic Inspection System (BAR-OIS) instead of the Emission

1 Inspection System (EIS) for testing of 2000 model year and newer gas powered vehicles 14,000
2 Gross Vehicle Weight Rating and under.

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

9 21. The VIN that is physically present on all vehicles is also required to be programmed
10 into the vehicle's OBD II computer on 2005 and newer vehicles, and on many occasions was
11 programmed into the OBD II computer in earlier model-years. This electronically programmed
12 VIN is referred to as the "eVIN" and is captured during a Smog Check. The eVIN should match
13 the physical VIN on the vehicle.

14 22. The OBD II communication protocol describes the specified communication
15 "language" used by the OBD II computer to communicate with the scan tools and other devices
16 such as the BAR-OIS. The communication protocol is programmed into the OBD II computer
17 during manufacture of the vehicle and does not change.

18 23. Parameter Identifications (PIDs) are data points reported by a vehicle's OBD II
19 system. Each make and model of vehicle reports a specific number of PIDs when it is being
20 tested by the BAR-OIS. The PIDs Count is the number of data points reported by the OBD II
21 system. The PIDs and PIDs Count are programmed during the manufacture of a vehicle.

22 24. Data retrieved and recorded during a BAR-OIS smog inspection include the eVIN, the
23 communication protocol, and the PIDs Count. This information is transmitted to the vehicle
24 information database during a smog inspection.

25 **Smog Inspection #1 – 1999 Ford**

26 25. On or about September 15, 2015, Respondents issued Smog Check Certificate
27 PW332287C to a 1999 Ford, license #6Z31211, using the EIS when the OIS should have been
28 used to test the vehicle.

1 **Smog Inspection #2 – 2006 Toyota**

2 26. A Bureau representative reviewed data for vehicles inspected by Respondent Poblete
3 and certified by Respondent SG Smog. The data revealed that on or about January 4, 2016,
4 Respondents fraudulently issued a smog check certificate of compliance to a 2006 Toyota, license
5 #5SCB603, using clean-plugging methods. Clean-plugging is the practice of testing one OBD II
6 system that would pass the smog inspection for the purpose of fraudulently issuing a smog
7 certificate of compliance to another vehicle that would not pass the smog inspection and/or is not
8 present for testing. The vehicle receiving the certificate of compliance is not actually tested by
9 the DAD during the smog inspection.

10 27. The 2006 Toyota that Respondent Poblete purportedly tested was not and could not
11 have been connected to the DAD when it was being certified because the OBD II data purportedly
12 transmitted by the 2006 Toyota could not have been transmitted by that vehicle.

13 28. The PID Count for the 2006 Toyota purportedly being tested did not match the
14 expected PID Count for that vehicle. Also, the eVIN and communication protocol for the 2006
15 Toyota purportedly being tested were not what they should have been.

16 29. The 2006 Toyota was clean-plugged as follows:

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Cert. #YV499965C	eVIN	Protocol	PID Count
Fraudulent Inspection 1/4/2016	2GCEC13C371501911	ICAN11bt500	43
Expected Value ¹	1NXBR32EX6Z653392	1914	18

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21 **Smog Inspection #3 – 2002 Honda**

22 30. From approximately November 10, 2015, through December 1, 2015, a Bureau
23 representative inspected and documented a 2002 Honda. The Bureau representative modified the
24 vehicle's exhaust system by removing the catalytic converter and installing a catalyst delete
25 exhaust pipe in its place. The Bureau representative also installed a non-approved add-on adaptor
26 under the downstream oxygen sensor in order to modify the oxygen sensor operation. After

27 _____
28 ¹ Expected value is the value recorded for "like vehicles" inspected.

1 making these modifications to the vehicle, the Bureau representative performed a smog inspection
2 on the vehicle. The vehicle failed the inspection due to the modifications.

3 31. On or about January 6, 2016, a Bureau representative drove the Honda to SG Smog
4 Check Center and requested a smog check inspection from Respondent Poblete. Respondent
5 Poblete inspected the vehicle, and Respondents issued the vehicle a smog check certificate of
6 compliance. The Bureau representative paid Respondent Poblete for the inspection.

7 32. On or about January 19, 2016, a Bureau representative reinspected the Honda and
8 determined that the previously made modifications were still present. The Bureau representative
9 performed a smog inspection on the vehicle, and the vehicle failed the inspection due to the
10 modifications.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Misleading Statements - Registration)**

13 33. Respondent SG Smog has subjected its registration to discipline under Code section
14 9884.7, subdivision (a)(1), in that it made statements which it knew or which by exercise of
15 reasonable care it should have known were untrue or misleading, as set forth above in paragraphs
16 19-32. Respondent Poblete performed smog inspections on two (2) vehicles and Respondent SG
17 Smog certified that those two vehicles passed inspection and were in compliance with applicable
18 laws and regulations, when in fact those vehicles should not have been issued smog certificates of
19 compliance.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud - Registration)**

22 34. Respondent SG Smog has subjected its registration to discipline under section 9884.7,
23 subdivision (a)(4), in that it committed acts which constitute fraud, as set forth above in
24 paragraphs 19-32.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program – Station License)**

3 35. Respondent SG Smog has subjected its station license to discipline under Health and
4 Safety Code section 44072.2, subdivisions (a) and (c), in that it violated sections of that Code and
5 applicable regulations, as set forth above in paragraphs 19-32, as follows:

6 a. **Health and Safety Code Section 44012:** Respondent SG Smog failed to ensure that
7 the emission control tests were performed on the vehicles in accordance with procedures
8 prescribed by the Department.

9 b. **California Code of Regulations, title 16, Section 3340.24, subdivision (c):**
10 Respondent SG Smog falsely or fraudulently issued electronic certificates of compliance for the
11 vehicles without performing bona fide inspections of the emission control devices and systems on
12 those vehicles as required by Health and Safety Code section 44012.

13 c. **California Code of Regulations, title 16, Section 3340.35, subdivision (c):**
14 Respondent SG Smog issued electronic certificates of compliance to the vehicles even though the
15 vehicles had not been inspected in accordance with California Code of Regulations, title 16,
16 section 3340.42.

17 d. **California Code of Regulations, title 16, Section 3340.42:** Respondent SG Smog
18 failed to conduct the required smog tests and inspections on the vehicles in accordance with the
19 Bureau's specifications.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Dishonesty, Fraud, or Deceit – Station License)**

22 36. Respondent SG Smog has subjected its station license to discipline under Health and
23 Safety Code section 44072.2, subdivision (d), in that it committed acts involving dishonesty,
24 fraud, or deceit whereby another was injured by issuing certificates of compliance to vehicles
25 without performing bona fide inspections of the emission control devices and systems on the
26 vehicles, thereby depriving the People of the State of California of the protection afforded by the
27 Motor Vehicle Inspection Program, as set forth above in paragraphs 19-32.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Violation of the Motor Vehicle Inspection Program – Smog Check Inspector License)**

3 37. Respondent Poblete has subjected her Smog Check Inspector License to discipline
4 under Health and Safety Code section 44072.2, subdivisions (a) and (c), in that she violated
5 sections of that Code and applicable regulations, as set forth above in paragraphs 19-32, as
6 follows:

7 a. **Health and Safety Code Section 44012:** Respondent Poblete failed to ensure that the
8 emission control tests were performed on the vehicles in accordance with procedures prescribed
9 by the Department.

10 b. **Health and Safety Code Section 44059:** Respondent Poblete willfully made false
11 statements or entries on the electronic certificates of compliance by certifying that the vehicles
12 had been inspected as required when, in fact, they had not.

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

16 d. **California Code of Regulations, title 16, section 3340.41, subdivision (c):**
17 Respondent Poblete entered into the emissions inspection system vehicle identification
18 information or emission control system identification data for a vehicle other than the one being
19 tested, and/or she knowingly entered into the emissions inspection system false information about
20 the vehicle being tested.

21 e. **California Code of Regulations, title 16, Section 3340.42:** Respondent Poblete
22 failed to conduct the required smog tests and inspections on the vehicles in accordance with the
23 Bureau's specifications.

24 f. **California Code of Regulations, title 16, Section 3340.45:** Respondent Poblete
25 failed to perform smog check inspections in accordance with the requirements and procedures
26 prescribed in the 2013 Smog Check Manual.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty, Fraud, or Deceit – Smog Check Inspector License)**

3 38. Respondent Poblete has subjected her Smog Check Inspector License to discipline
4 under Health and Safety Code section 44072.2, subdivision (d), in that she committed acts
5 involving dishonesty, fraud, or deceit whereby another was injured when she made false entries
6 on the electronic certificates of compliance and certified that the vehicles had been inspected as
7 required when, in fact, they had not, as set forth above in paragraphs 19-32.

8 **OTHER MATTERS**

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

14 40. Pursuant to Health & Safety Code section 44072.8, if Respondent SG Smog's Station
15 license is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of
16 Division 26 of the Health and Safety Code in the name of Respondent SG Smog may be likewise
17 revoked or suspended by the Director.

18 41. Pursuant to Health & Safety Code section 44072.8, if Respondent SG Smog's Station
19 license is revoked or suspended, Smog Check Inspector License Number EO152988 issued to
20 Sudarshan Kumar Goswani may be likewise revoked or suspended by the Director.

21 42. Pursuant to Health & Safety Code section 44072.8, if Respondent Poblete's Smog
22 Check Inspector license is revoked or suspended, any additional license issued under Chapter 5 of
23 Part 5 of Division 26 of the Health and Safety Code in the name of Respondent Poblete may be
24 likewise revoked or suspended by the Director.

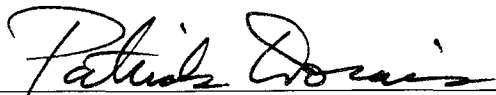
25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
27 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

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- 1 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
- 2 279298 issued to SG Smog Check Center, Sudarshan Kumar Goswani, Owner;
- 3 2. Revoking or suspending Smog Check Test Only Station License Number TC 279298
- 4 issued to SG Smog Check Center, Sudarshan Kumar Goswani, Owner;
- 5 3. Revoking or suspending any additional Automotive Repair Dealer registrations or
- 6 Smog Check Station licenses issued to Sudarshan Kumar Goswani;
- 7 4. Revoking or suspending Smog Check Inspector License Number EO152988 issued to
- 8 Sudarshan Kumar Goswani;
- 9 5. Revoking or suspending Smog Check Inspector License Number EO 636124 issued to
- 10 Cheryl Bascom Poblete;
- 11 6. Revoking or suspending any additional Smog Check Inspector license issued to
- 12 Cheryl Bascom Poblete;
- 13 7. Ordering SG Smog Check Center, Sudarshan Kumar Goswani, Owner, to pay the
- 14 Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this
- 15 case pursuant to Business and Professions Code section 125.3;
- 16 8. Ordering Cheryl Bascom Poblete to pay the Bureau of Automotive Repair the
- 17 reasonable costs of the investigation and enforcement of this case pursuant to Business and
- 18 Professions Code section 125.3;
- 19 9. Taking such other and further action as deemed necessary and proper.

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21 DATED: July 12, 2017



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

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