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

12 In the Matter of the Accusation Against:

Case No. 79/17-20391

13 **SMOG CENTER LLC, DBA GREEN**
SMOG CHECK, INDRANIL VIKAS
14 **CHITRE, LEIBOFF FAMILY TRUST,**
15 **ANGELA LESLIE D'AGOSTA,**
MEMBERS

A C C U S A T I O N

16 **2126 Hamner Ave., Unit 102**
Norco, CA 92860

17
18 **22041 Constanso St, Apt 103**
Woodland Hills, CA 91364

19 **Automotive Repair Dealer Registration No.**
ARD 282268

20 **Smog Check-Test Only Station License No.**
TC 282268,

21 **and**

22 **TAYLOR A. ZAPPULLA**
23 **811 Drake Ave.**
24 **Claremont, CA 91711**

25 **Smog Check Inspector License No. EO**
637331

26 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 December 16, 2015, the Bureau of Automotive Repair issued Automotive
6 Repair Dealer Registration Number ARD 282268 to Smog Center LLC, dba Green Smog Check,
7 Indranil Vikas Chitre, Leiboff Family Trust, Angela Leslie D'Agosta, Members (Respondent Green
8 Smog Check). The Automotive Repair Dealer Registration was in full force and effect at all times
9 relevant to the charges brought herein and will expire on December 31, 2018, unless renewed.

10 3. On or about December 29, 2015, the Bureau of Automotive Repair issued Smog
11 Check-Test Only Station License Number TC 282268 to Smog Center LLC, dba Green Smog
12 Check, Indranil Vikas Chitre, Leiboff Family Trust, Angela Leslie D'Agosta, Members
13 (Respondent Green Smog Check). The Smog Check-Test Only Station License was in full force
14 and effect at all times relevant to the charges brought herein and will expire on December 31,
15 2018, unless renewed.

16 4. On or about September 22, 2014, the Bureau of Automotive Repair issued Smog
17 Check Inspector License Number EO 637331 to Taylor A. Zappulla (Respondent Zappulla). The
18 Smog Check Inspector License was in full force and effect at all times relevant to the charges
19 brought herein and will expire on June 30, 2018, unless renewed.

20 **JURISDICTION**

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

23 6. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"
24" "License" includes certificate, registration or other means to engage in a business or
25 profession regulated by the Code.

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1 7. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
2 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
3 the Motor Vehicle Inspection Program.

4 8. Section 44072.4 of the Health and Safety Code states:

5 The director may take disciplinary action against any licensee after a hearing
6 as provided in this article by any of the following:

7 (a) Imposing probation upon terms and conditions to be set forth by the
8 director.

9 (b) Suspending the license.

10 (c) Revoking the license.

11 9. Section 44072.2 of the Health and Safety Code states:

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

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

18 ...

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

20 ...

21 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
22 expiration or suspension of a license by operation of law, or by order or decision of the Director of
23 Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the
24 Director of jurisdiction to proceed with disciplinary action.

25 11. Section 44072.7 of the Health and Safety Code states:

26 All accusations against licensees shall be filed within three years after the act
27 or omission alleged as the ground for disciplinary action, except that with respect to
28 an accusation alleging a violation of subdivision (d) of Section 44072.2, the
accusation may be filed within two years after the discovery by the bureau of the
alleged facts constituting the fraud or misrepresentation prohibited by that section.

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12. 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.

13. Section 44072.10 of the Health and Safety Code states:

(a) Notwithstanding Sections 44072 and 44072.4, the director, or the director's designee, pending a hearing conducted pursuant to subdivision (e), may temporarily suspend any smog check station or technician's license issued under this chapter, for a period not to exceed 60 days, if the department determines that the licensee's conduct would endanger the public health, safety, or welfare before the matter could be heard pursuant to subdivision (e), based upon reasonable evidence of any of the following:

- (1) Fraud.
- (2) Tampering.
- (3) Intentional or willful violation of this chapter or any regulation, standard, or procedure of the department implementing this chapter.
- (4) A pattern or regular practice of violating this chapter or any regulation, standard, or procedure of the department implementing this chapter.

...

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

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

14. California Code of Regulations, title 16, section 3340.28, subdivision (e), states:

Upon renewal of an unexpired Basic Area Technician license or an Advanced Emission Specialist Technician license issued prior to the effective date of this regulation, the licensee may apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

1 15. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Director of jurisdiction to proceed with
3 a disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 16. Section 9884.13 of the Code provides, in pertinent part, that the expiration of a valid
6 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
7 proceeding against an automotive repair dealer or to render a decision invalidating a registration
8 temporarily or permanently.

9 17. Section 9884.20 of the Code states:

10 All accusations against automotive repair dealers shall be filed within three years after
11 the performance of the act or omission alleged as the ground for disciplinary action,
12 except that with respect to an accusation alleging fraud or misrepresentation as a
13 ground for disciplinary action, the accusation may be filed within two years after the
14 discovery, by the bureau, of the alleged facts constituting the fraud or
15 misrepresentation.

16 18. Section 9884.22 of the Code states:

17 (a) Notwithstanding any other provision of law, the director may revoke, suspend, or
18 deny at any time any registration required by this article on any of the grounds for
19 disciplinary action provided in this article. The proceedings under this article shall be
20 conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1
21 of Division 3 of Title 2 of the Government Code, and the director shall have all the
22 powers granted therein. . . .

23 STATUTORY PROVISIONS

24 19. Section 22 of the Code states:

25 (a) 'Board' as used in any provisions of this Code, refers to the board in which the
26 administration of the provision is vested, and unless otherwise expressly provided,
27 shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining
28 committee,' 'program,' and 'agency.'

(b) Whenever the regulatory program of a board that is subject to review by the Joint
Committee on Boards, Commissions, and Consumer Protection, as provided for in
Division 1.2 (commencing with Section 473), is taken over by the department, that
program shall be designated as a 'bureau.'

20. Section 23.7 of the Code states:

"Unless otherwise expressly provided, license means license, certificate, registration,
or other means to engage in a business or profession regulated by this code or referred
to in Section 1000 or 3600."

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21. Section 9884.7 of the Code states:

(a) The director, where 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.

22. 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 and may require loaded mode dynamometer testing in enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic system, or other appropriate test procedures as determined by the department in consultation with the state board. The department shall implement testing using onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle testing, on model year 2000 and newer vehicles only, beginning no earlier than January 1, 2013. However, the department, in consultation with the state board, may prescribe alternative test procedures that include loaded mode dynamometer or two-speed idle testing for vehicles with onboard diagnostic systems that the department and the state board determine exhibit operational problems. The department shall ensure, as appropriate to the test method, the following:

(a) Emission control systems required by state and federal law are reducing excess emissions in accordance with the standards adopted pursuant to subdivisions (a) and (c) of Section 44013.

(b) Motor vehicles are preconditioned to ensure representative and stabilized operation of the vehicle's emission control system.

1 (c) For other than diesel-powered vehicles, the vehicle's exhaust emissions of
2 hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen in an idle
3 mode or loaded mode are tested in accordance with procedures prescribed by the
4 department. In determining how loaded mode and evaporative emissions testing
shall be conducted, the department shall ensure that the emission reduction targets
for the enhanced program are met.

5 (d) For other than diesel-powered vehicles, the vehicle's fuel evaporative
6 system and crankcase ventilation system are tested to reduce any nonexhaust
7 sources of volatile organic compound emissions, in accordance with procedures
prescribed by the department.

8 (e) For diesel-powered vehicles, a visual inspection is made of emission
9 control devices and the vehicle's exhaust emissions are tested in accordance with
10 procedures prescribed by the department, that may include, but are not limited to,
11 onboard diagnostic testing. The test may include testing of emissions of any or all
of the pollutants specified in subdivision (c) and, upon the adoption of applicable
standards, measurement of emissions of smoke or particulates, or both.

12 (f) A visual or functional check is made of emission control devices specified
13 by the department, including the catalytic converter in those instances in which the
14 department determines it to be necessary to meet the findings of Section 44001.
The visual or functional check shall be performed in accordance with procedures
prescribed by the department.

15 (g) A determination as to whether the motor vehicle complies with the
16 emission standards for that vehicle's class and model-year as prescribed by the
department.

17 (h) An analysis of pass and fail rates of vehicles subject to an onboard
18 diagnostic test and a tailpipe test to assess whether any vehicles passing their
19 onboard diagnostic test have, or would have, failed a tailpipe test, and whether any
20 vehicles failing their onboard diagnostic test have or would have passed a tailpipe
test.

21 (i) The test procedures may authorize smog check stations to refuse the
22 testing of a vehicle that would be unsafe to test, or that cannot physically be
23 inspected, as specified by the department by regulation. The refusal to test a vehicle
for those reasons shall not excuse or exempt the vehicle from compliance with all
applicable requirements of this chapter.

24 23. Section 44015 of the Health and Safety Code states:

25 (a) A licensed smog check station shall not issue a certificate of compliance,
26 except as authorized by this chapter, to any vehicle that meets the following
27 criteria:

28 (1) A vehicle that has been tampered with.

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(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

24. Section 44059 of the Health and Safety Code states:

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

REGULATORY PROVISIONS

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

....

(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.

26. California Code of Regulations, title 16, section 3340.30 states:

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

(a) Inspect, test and repair vehicles, as applicable, 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.

27. California Code of Regulations, title 16, section 3340.35 provides, in pertinent part, that a licensed station shall issue a certificate of compliance . . . to the owner or operator of any vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of this article and has all the required emission control equipment and devices installed and functioning correctly.

28. California Code of Regulations, title 16, section 3340.41 states, in part:

....

(b) No person shall enter into the emissions inspection system any access or qualification number other than as authorized by the bureau, nor in any way tamper with the emissions inspection system.

1 (c) No person shall enter into the emissions inspection system any vehicle
2 identification information or emission control system identification data for any
3 vehicle other than the one being tested. Nor shall any person knowingly enter into
4 the emissions inspection system any false information about the vehicle being
5 tested.

6

7 29. California Code of Regulations, title 16, section 3340.42 provides, in part, that smog
8 check stations and smog check technicians shall conduct tests and inspections in accordance with
9 the Bureau's BAR 97 Emission Inspection System Specifications and/or the On Board Data
10 Inspection System referenced in subsections (a) and (b) of Section 3340.17.

11 30. California Code of Regulations, title 16, section 3340.42.2 states:

12 (c) Starting on or after January 1, 2013, OBD equipped vehicles shall fail
13 the OBD inspection if any one of the following conditions occurs as applicable to the
14 vehicle:

15 ...

16 (7) The vehicle's OBD system data is inappropriate for the vehicle being
17 tested;

18 (8) The vehicle's OBD system data does not match the original equipment
19 manufacturer (OEM) or an Air Resources Board (ARB) exempted OBD software
20 configuration....

21 COSTS

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

28 CLEAN PLUGGING

32. At all times alleged in this Accusation, Respondent Zappulla was acting in the course
and within the scope of a technician, employee, partner, officer, or member of Respondent Green
Smog Check.

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1 33. The On-Board Diagnostics – Generation II (OBD II) communication protocol
2 describes the specified communication “language” used by the OBD II system electronic control
3 unit to communicate to scan tools and other devices such as the On-Board Diagnostic Inspection
4 System (OIS). The communication protocol is programmed into the OBD II system electronic
5 control unit during manufacture and does not change.

6 34. Parameter Identifications (PID) are data points reported by the OBD II system
7 electronic control unit to the scan tool or OIS. Examples of PIDs are engine speed (rpm), vehicle
8 speed, engine temperature, and other input and output values utilized by the OBD II system
9 electronic control unit. The PID count is the number of data points reported by the OBD II
10 system electronic control unit and is programmed during manufacture.

11 35. The Vehicle Identification Number (VIN) that is physically present on all vehicles is
12 also required to be programmed into the vehicle’s OBD II on 2005 and newer vehicles, and on
13 many occasions was programmed into the OBD II system electronic control unit in earlier model-
14 years. This electronically programmed VIN, also known as the “eVIN,” is captured by BAR during
15 a Smog Check, and should match the physical VIN on the vehicle.

16 36. During a Bureau representative’s review of Respondents’ certified test results in the
17 Vehicle Information Database (VID) for inspections purportedly performed on the OIS between
18 January 2017, and December 2017, six (6) vehicles identified below had deviations in one or more
19 of the following: eVIN, incorrect vehicle communication protocol, and/or incorrect PID count.
20 This indicates that the vehicles receiving smog certificates were fraudulently tested during the
21 smog check inspection by a method known as Clean Plugging.¹ A detailed explanation of each
22 fraudulent smog check is as follows:

23 **37. Clean Plug No. 1:**

24 On or about January 5, 2017, between 12:25 p.m. and 12:44 p.m., a 2002 Ford Mustang,
25 VIN 1FAPP44412F119823, CA License 6LTP816 was inspected. A Certificate of Compliance

26 ¹ To “clean plug” a vehicle, the technician uses another vehicle’s properly functioning OBD
27 II system, or another source, to generate passing diagnostic readings for the purpose of issuing
28 fraudulent smog certificates of compliance to vehicles that are not in smog compliance or not
present during the certified test.

1 was issued by Respondent Green Smog Check using license EO 637331, belonging to Smog
2 Check Inspector Zappulla. OIS Test Details for the 2002 Ford Mustang showed an incorrect
3 eVIN reported as 1ZVHT80NX95110328, the protocol reported as ICAN11bt5, and the PID
4 count was 47. Comparative OIS Test Data for One Thousand (1000)² 2002 Ford Mustang
5 vehicles shows that 98.4% report the correct eVIN, have a communication protocol of JPWM,
6 and report a PID count of 21.

7 On or about June 17, 2015, another licensed smog check facility performed a smog check
8 inspection on the 2002 Ford Mustang, VIN 1FAPP44412F119823, CA License 6LTP816. The
9 OIS Test Data shows the vehicle failed the inspection, transmitted the correct eVIN, had the
10 expected communication protocol JPWM, and transmitted a PID count of 21.

11 The OIS Test Data shows that a 2009 Ford Mustang, VIN 1ZVHT80NX95110328, was the
12 vehicle used to generate the fraudulent Smog Certificate of Compliance for the 2002 Ford
13 Mustang. The 2009 Ford Mustang was certified under Respondent Zappulla on the same day,
14 January 5, 2017, as the fraudulent inspection of the 2002 Ford Mustang. The OIS Test Data
15 transmitted for the 2009 Ford Mustang matches the OIS Test Data for the fraudulent inspection of
16 the 2002 Ford Mustang for the eVIN, Protocol and PID count.

17 The discrepancies in the OIS Test Data prove that Green Smog Check's OIS Data
18 Acquisition Device (DAD) was not connected to the 2002 Ford Mustang being certified, resulting
19 in the issuance of a fraudulent Certificate of Compliance.

20 **38. Clean Plug No. 2:**

21 On or about August 8, 2017, between 1:12 p.m. and 1:19 p.m., a 2002 GMC Yukon XL
22 C1500, VIN 1GKEC16T22J235277, CA License No. 4WJH464 was inspected. A Certificate of
23 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
24 Smog Check Inspector Zappulla. OIS Test Details for the 2002 GMC Yukon XL C1500 showed
25 an incorrect eVIN reported as 1GCRCE01CZ306997, the protocol reported as ICAN11bt5, and
26 the PID count was 45|7|8. Comparative OIS Test Data for Seven Hundred Six (706), 2002 GMC

27 ² This number is based on the most recent available total number of similar vehicles tested
28 statewide, or up to one thousand (1000).

1 Yukon XL C1500 vehicles shows that 96% report the correct eVIN, have a communication
2 protocol of JVPW, and report a PID count of 22.

3 On or about May 16, 2017, another licensed smog check facility performed a smog check
4 inspection on the 2002 GMC Yukon XL C1500, VIN 1GKEC16T22J235277, CA License No.
5 4WJH464. The OIS Test Details shows the vehicle failed the inspection, transmitted the correct
6 eVIN, had the expected communication protocol JVPW and transmitted a PID count of 22.

7 The OIS Test Data shows that a 2012 Chevrolet Silverado C1500 LT, VIN
8 1GCRCSE01CZ306997, was the vehicle used to generate the fraudulent Smog Certificate of
9 Compliance for the 2002 GMC Yukon XL C1500. The 2012 Chevrolet Silverado C1500 LT was
10 certified under Respondent Green Smog Check using license EO 637331, belonging to Smog
11 Check Inspector Zappulla on or about August 5, 2017. The OIS Test Data transmitted for the
12 2012 Chevrolet Silverado C1500 LT matches the OIS Test Data for the fraudulent inspection of
13 the 2002 GMC Yukon XL C1500 for the eVIN, Protocol and PID Count.

14 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
15 connected to the 2002 GMC Yukon XL C1500 being certified, resulting in the issuance of a
16 fraudulent Certificate of Compliance.

17 **39. Clean Plug No. 3:**

18 On or about November 10, 2017, between 8:26 a.m. and 8:33 a.m., a 2005 Toyota Prius,
19 VIN JTDKB20U653111322, CA License No. 5RRW679 was inspected. A Certificate of
20 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
21 Smog Check Inspector Zappulla. OIS Test Details for the 2005 Toyota Prius showed an incorrect
22 eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and the PID
23 count was 39. Comparative OIS Test Data for One Thousand (1000) 2005 Toyota Prius vehicles
24 shows that 100% report the correct eVIN, have a communication protocol of ICAN11bt5, and
25 report a PID count of 34, or 37|21|17, or 37|21|5.

26 On or about March 17, 2016, another licensed smog check facility performed a smog check
27 inspection on the 2005 Toyota Prius, VIN JTDKB20U653111322, CA License No. 5RRW679.

1 The OIS Test Details shows the vehicle transmitted the correct eVIN, had the expected
2 communication protocol ICAN11bt5 and transmitted a PID count of 37|21|17.

3 The DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a
4 2015 Honda Accord, and not a 2005 Toyota Prius.

5 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
6 connected to the 2005 Toyota Prius being certified, resulting in the issuance of a fraudulent
7 Certificate of Compliance.

8 **40. Clean Plug No. 4:**

9 On or about November 10, 2017, between 1:51 p.m. and 1:55 p.m., a 2001 Ford Escape
10 XLT, VIN 1FMYU03171KF92686, CA License No. 4SJL573 was inspected. A Certificate of
11 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
12 Smog Check Inspector Zappulla. OIS Test Details for the 2001 Ford Escape XLT showed an
13 incorrect eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and the
14 PID count was 39. Comparative OIS Test Data for One Thousand (1000) 2001 Ford Escape XLT
15 vehicles shows that 98% report the correct eVIN, have a communication protocol of JPWM, and
16 report a PID count of 20.

17 On or about July 31, 2017, another licensed smog check facility performed a smog check
18 inspection on the 2001 Ford Escape XLT, VIN 1FMYU03171KF92686, CA License No.
19 4SJL573. The OIS Test Details shows the vehicle failed the inspection, transmitted the correct
20 eVIN, had the expected communication protocol JPWM and transmitted a PID count of 20.

21 The DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a
22 2015 Honda Accord, and not a 2001 Ford Escape XLT.

23 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
24 connected to the 2001 Ford Escape XLT being certified, resulting in the issuance of a fraudulent
25 Certificate of Compliance.

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1 **41. Clean Plug No. 5:**

2 On or about November 18, 2017, between 11:34 a.m. and 11:39 a.m., a 2000 Mercedes-
3 Benz S 500, VIN WDBNG75J4YA101803, CA License No. PGAW was inspected. A Certificate
4 of Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging
5 to Smog Check Inspector Zappulla. OIS Test Details for the 2000 Mercedes-Benz S 500 showed
6 an incorrect eVIN reported as 1HGCR2F32FA150065, the protocol reported as ICAN29bt5, and
7 the PID count was 39. Comparative OIS Test Data for One Thousand (1000), 2000 Mercedes-
8 Benz S 500 vehicles shows that 98.7% do not report an eVIN, have a communication protocol of
9 I914, and report a PID count of 21.

10 On or about June 25, 2016, another licensed smog check facility performed a smog check
11 inspection on the 2000 Mercedes-Benz S 500, VIN WDBNG75J4YA101803, CA License No.
12 PGAW. The OIS Test Details shows the vehicle did not transmit an eVIN, had the expected
13 communication protocol I914 and transmitted a PID count of 21.

14 DMV registration information indicates VIN 1HGCR2F32FA150065 corresponds to a 2015
15 Honda Accord, not a 2000 Mercedes-Benz S 500.

16 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
17 connected to the 2000 Mercedes-Benz S 500 being certified, resulting in the issuance of a
18 fraudulent Certificate of Compliance.

19 **42. Clean Plug No. 6:**

20 On or about December 11, 2017, between 1:05 p.m. and 1:09 p.m., a 2005 Chevrolet Astro,
21 VIN 1GNDM19X65B111750, CA License No. 5LDU460 was inspected. A Certificate of
22 Compliance was issued by Respondent Green Smog Check using license EO 637331, belonging to
23 Smog Check Inspector Zappulla. OIS Test Details for the 2005 Chevrolet Astro showed an eVIN
24 was not reported, the protocol reported as I914, and the PID count was 16. Comparative OIS
25 Test Data for Seven Hundred Sixty-Two (762), 2005 Chevrolet Astro vehicles shows that 99.2%
26 report the eVIN, have a communication protocol of JVPW, and report a PID count of 21.

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1 The discrepancies in the OIS Test Data prove that Green Smog Check's DAD was not
2 connected to the 2005 Chevrolet Astro being certified, resulting in the issuance of a fraudulent
3 Certificate of Compliance.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statement)**

6 43. Complainant re-alleges and incorporates by reference the allegations set forth above in
7 the foregoing paragraphs.

8 44. Respondent Green Smog Check's Registration is subject to disciplinary action under
9 section 9884.7, subdivision (a)(1), in that Respondent Green Smog Check made or authorized
10 statements which Respondent Green Smog Check knew or in the exercise of reasonable care
11 should have known to be untrue or misleading.

12 45. Respondent Green Smog Check certified that the vehicles listed in paragraphs 37-42,
13 had passed inspection and were in compliance with all applicable laws and regulations, when in
14 fact and in truth, Respondent Green Smog Check inspected the vehicles using the clean plugging
15 method to issue fraudulent certificates of compliance.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of Motor Vehicle Inspection Program)**

18 46. Complainant re-alleges and incorporates by reference the allegations set forth above in
19 the foregoing paragraphs.

20 47. Respondent Green Smog Check's Smog Check Station License is subject to
21 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that
22 Respondent Green Smog Check failed to comply with the following sections of that Code:

23 a. **Section 44012**: failed to perform the tests of the emission control systems and devices
24 on the vehicles listed in paragraphs 37-42, in accordance with procedures prescribed by the
25 Department.

26 b. **Section 44015, subd. (a) and (b)**: issued a certificate of compliance for the vehicles
27 listed in paragraphs 37-42, without properly testing and inspecting them to determine if they were
28 in compliance with Health & Safety Code section 44012.

1 c. **Section 44035**: failed to meet or maintain the standards prescribed for qualification,
2 equipment, performance, or conduct by failing to properly perform a smog inspection on the
3 vehicles listed in paragraphs 37-42 or certifying that such tests had been performed, when in fact
4 they were never performed.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 48. Complainant re-alleges and incorporates by reference the allegations set forth above in
8 the foregoing paragraphs.

9 49. Respondent Green Smog Check's Smog Check Station License is subject to
10 disciplinary action under Health and Safety Code section 44072.2, subdivision (a), in that
11 Respondent Green Smog Check failed to comply with the following sections of Title 16, California
12 Code of Regulations:

13 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles listed in
14 paragraphs 37-42, in accordance with the procedures specified in section 3340.42 of the
15 Regulations and failed to ensure that the vehicles had all the required emission control equipment
16 and devices installed and functioning correctly.

17 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
18 System false information about the vehicles listed in paragraphs 37-42, providing results for smog
19 inspections which were not actually performed.

20 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in
21 paragraphs 37-42, in accordance with the Bureau's specifications.

22 d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in
23 paragraphs 37-42, in accordance with the Smog Check Manual, dated 2013.

24 **FOURTH CAUSE FOR DISCIPLINE**

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

26 50. Complainant re-alleges and incorporates by reference the allegations set forth above in
27 the foregoing paragraphs.

28

1 **SIXTH CAUSE FOR DISCIPLINE**

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

3 54. Complainant re-alleges and incorporates by reference the allegations set forth above in
4 the foregoing paragraphs.

5 55. Respondent Zappulla's license is subject to disciplinary action under Health and Safety
6 Code sections 44072.10, subdivisions (a) and (c) and 44072.2, subdivision (a) in that Respondent
7 Zappulla failed to comply with the following sections of Title 16, California Code of Regulations:

8 a. **Section 3340.35, subdivision (c)**: failed to inspect and test the vehicles listed in
9 paragraphs 37-42, in accordance with the procedures specified in section 3340.42 of the
10 Regulations and failed to ensure that the vehicles listed in paragraphs 37-42, had all the required
11 emission control equipment and devices installed and functioning correctly.

12 b. **Section 3340.41, subdivision (c)**: knowingly entered into the Emissions Inspection
13 System false information about the vehicles listed in paragraphs 37-42, providing results for smog
14 inspections which were not actually performed.

15 c. **Section 3340.42**: failed to conduct the required smog tests on the vehicles listed in
16 paragraphs 37-42, in accordance with the Bureau's specifications.

17 d. **Section 3340.45**: failed to conduct the required smog tests on the vehicles listed in
18 paragraphs 37-42, in accordance with the Smog Check Manual, dated 2013.

19 **SEVENTH CAUSE FOR DISCIPLINE**

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

21 56. Complainant re-alleges and incorporates by reference the allegations set forth above in
22 the foregoing paragraphs.

23 57. Respondent Zappulla's license is subject to disciplinary action under Health and Safety
24 Code sections 44072.10, subdivision (a) and (c) and 44072.2, subdivision (d), in that Respondent
25 Zappulla committed dishonest, fraudulent, or deceitful acts whereby another is injured by issuing a
26 smog certificate of compliance for the vehicles listed in paragraphs 37-42, without performing
27 bona fide inspections of the emission control devices and systems on the vehicles, thereby
28

1 depriving the People of the State of California of the protection afforded by the Motor Vehicle
2 Inspection Program.

3 **OTHER MATTERS**

4 58. Under Code section 9884.7, subdivision (c), the Director may suspend, revoke or
5 place on probation the registration for all places of business operated in this State by Respondent
6 Green Smog Check upon a finding that Respondent has, or is, engaged in a course of repeated and
7 willful violations of the laws and regulations pertaining to an automotive repair dealer.

8 59. Under Health & Safety Code section 44072.8, if Respondent Green Smog Check's
9 Smog Check Station License is revoked or suspended, the Director may likewise revoke or
10 suspend any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and
11 Safety Code in the name of Respondent Green Smog Check.

12 60. Under Health & Safety Code section 44072.8, if Respondent Zappulla's Smog Check
13 Inspector License is revoked or suspended, the Director may likewise revoke or suspend any
14 additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in
15 the name of Respondent Zappulla.

16 **PRAYER**

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

19 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
20 282268, issued to Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff
21 Family Trust, Angela Leslie D'Agosta, Members;

22 2. Revoking or suspending any other ARD registrations in the name of Smog Center,
23 LLC;

24 3. Revoking or suspending Smog Check-Test Only Station License Number TC 282268,
25 issued to Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff Family Trust,
26 Angela Leslie D'Agosta, Members;

27 4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
28 Division 26 of the Health and Safety Code in the name of Smog Center, LLC;

1 5. Revoking or suspending Smog Check Inspector License Number EO 637331, issued
2 to Taylor A. Zappulla;

3 6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of
4 Division 26 of the Health and Safety Code in the name of Taylor A. Zappulla;

5 7. Ordering Smog Center LLC, dba Green Smog Check, Indranil Vikas Chitre, Leiboff
6 Family Trust, Angela Leslie D'Agosta, Members and Taylor A. Zappulla to pay the Bureau of
7 Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant
8 to Business and Professions Code section 125.3; and,

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

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DATED:

May 25, 2018



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PATRICK DORAIS

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Chief

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Bureau of Automotive Repair

Department of Consumer Affairs

State of California

Complainant

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