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

12 In the Matter of the First Amended Accusation Against:

Case No. 79/12-143

13 **E R SMOGS**
14 **EDWARD DEREbenskiy, Owner**
15 4235 Power Inn Rd., Unit C
Sacramento, California 95826
16 Automotive Repair Dealer Registration No. ARD 241005
Smog Check Station License No. RC 241005
17 Lamp Station License No. LS 241005
18 Brake Station License No. BS 241005

OAH No. 2012070936

**FIRST AMENDED
ACCUSATION**

19 and

20 **JOSE ANTONIO TEJEDA GUDINO**
21 4235 Power Inn Rd., Unit C
Sacramento, California 95826
22 Smog Check Inspector License No. EO632708
Smog Check Repair Technician License No. EI632708
23 (formerly Advanced Emission Specialist Technician License
No. EA632708)

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25 Respondents.

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1 Patrick Dorais ("Complainant") alleges:

2 **PARTIES**

3 1. Complainant brings this First Amended Accusation solely in his official capacity as
4 the Acting Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer
5 Affairs. This First Amended Accusation replaces in its entirety Accusation No. 79/12-143 filed
6 on May 16, 2012.

7 **E R Smogs**

8 2. In or about 2005, the Bureau issued Automotive Repair Dealer Registration
9 Number ARD 241005 ("registration") to Edward Derebenskiy, doing business as E R Smogs
10 ("Respondent E R"). The registration was in full force and effect at all times relevant to the
11 charges brought herein and will expire on August 31, 2013, unless renewed.

12 3. On or about October 24, 2005, the Bureau issued Smog Check Station Number
13 RC 241005 ("station license") to Respondent E R. The station license was in full force and effect
14 at all times relevant to the charges brought herein and will expire on August 31, 2013, unless
15 renewed.

16 4. On or about October 27, 2005, the Bureau issued Lamp Station License Number
17 LS 241005 to Respondent E R. The lamp station license was in full force and effect at all times
18 relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

19 5. On or about October 27, 2005, the Bureau issued Brake Station License Number
20 BS 241005 to Respondent E R. The brake station license was in full force and effect at all times
21 relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

22 **Jose Antonio Tejeda Gudino**

23 6. On or about December 1, 2010, the Director issued Advanced Emission Specialist
24 Technician License Number EA 632708 to Jose Antonio Tejeda Gudino ("Respondent Gudino").
25 Respondent Gudino's advanced emission specialist technician license was due to expire on
26 November 30, 2012. Pursuant to California Code of Regulations, Title 16, Section 3340.28(e),
27 the license was renewed, pursuant to Respondent Gudino's election, as Smog Check Inspector

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1 License Number EO 632708 and Smog Check Repair Technician License Number EI 632708¹
2 ("technician licenses"). The technician licenses will expire on November 30, 2014 unless
3 renewed.

4 STATUTORY PROVISIONS

5 7. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
6 part:

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

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

16 (4) Any other conduct which constitutes fraud.

17 (b) Except as provided for in subdivision (c), if an automotive repair
18 dealer operates more than one place of business in this state, the director pursuant to
19 subdivision (a) shall only suspend, revoke, or place on probation the registration of
20 the specific place of business which has violated any of the provisions of this chapter.
21 This violation, or action by the director, shall not affect in any manner the right of the
22 automotive repair dealer to operate his or her other places of business.

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

28 8. Section 9889.3 of the Code states, in pertinent part:

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

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¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28, 3340.29 and 3340.30 were amended to implement a license restructure from the Advanced Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog Check Inspector (EO) license and/or Smog Check Repair Technician (EI) licenses

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

9. Section 9889.1 of the Code states:

Any license issued pursuant to Articles 5 and 6, may be suspended or revoked by the director. The director may refuse to issue a license to any applicant for the reasons set forth in Section 9889.2. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all the powers granted therein.

10. Section 9889.9 of the Code states:

When any license has been revoked or suspended following a hearing under the provisions of this article, any additional license issued under Articles 5 and 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the director.

11. Section 9889.7 of the Code states:

The expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the director of jurisdiction to proceed with any investigation of or action or disciplinary proceedings against such licensee, or to render a decision suspending or revoking such license.

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

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

14. Section 44072.2 of the Health and Safety Code states, in pertinent part:

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

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

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

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

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

6 16. Section 44072.8 of the Health and Safety Code states:

7 "When a license has been revoked or suspended following a hearing
8 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."

9 17. California Code of Regulations, Title 16, Section 3340.28(e) states that "[U]pon
10 renewal of an unexpired Basic Area Technician license of an Advanced Emission Specialist
11 Technician license issued prior to the effective date of this regulation, the licensee may apply to
12 renew as a Smog Check Inspector, Smog Check Repair Technician, or both."

13 **COST RECOVERY**

14 18. Code section 125.3 provides, in pertinent part, that a Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **UNDERCOVER OPERATION NO. 1: 1998 FORD EXPLORER**

19 19. On or about March 3, 2011, an undercover Bureau operator ("operator") drove a
20 Bureau documented 1998 Ford Explorer to Respondent E R's facility and requested a smog
21 inspection. The vehicle could not pass a smog inspection because the vehicle's Malfunction
22 Indicator Lamp ("MIL") was not functional. The operator signed a work order and received a
23 copy. Respondent Gudino performed the smog inspection. Respondent Gudino entered "pass"
24 into the Emissions Inspection System ("EIS") for the visual inspection when, in fact, the vehicle
25 could not have passed the visual inspection due to the missing MIL bulb and socket. In addition,
26 Respondent Gudino entered "fail" into the EIS for the functional portion of the test for the

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1 exhaust Gas Recirculation ("EGR") when, in fact, that test did not apply to this vehicle². The
2 operator paid Respondent E R \$59.75 and received a copy of Invoice No. [REDACTED] and a Vehicle
3 Inspection Report ("VIR").

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Untrue or Misleading Statements)**

6 20. Respondent E R's registration is subject to discipline pursuant to Code section
7 9884.7(a)(1), in that on or about March 3, 2011, Respondent made or authorized statements
8 which he knew or in the exercise of reasonable care he should have known to be untrue or
9 misleading by generating an untrue or misleading VIR by entering "pass" into the EIS for the
10 visual inspection when, in fact, the vehicle could not have passed the visual inspection due to the
11 non-functional MIL. In addition, Respondent Gudino entered "fail" into the EIS for the
12 functional portion of the test for the EGR when, in fact, that test did not apply to this vehicle.

13 **SECOND CAUSE FOR DISCIPLINE**

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

15 21. Respondent E R's station license is subject to discipline pursuant to Health &
16 Safety Code section 44072.2(a), in that on or about March 3, 2011, Respondent failed to comply
17 with Health and Safety Code section 44012(f), by failing to perform an emission control
18 inspection on the vehicle in accordance with procedures prescribed by the department.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failure to Comply with Regulations)**

21 22. Respondent E R's station license is subject to discipline pursuant to Health &
22 Safety Code section 44072.2(c), in that on or about March 3, 2011, Respondent failed to comply
23 with California Code of Regulations, title 16, section 3340.42, by failing to conduct the required
24 smog tests on the vehicle in accordance with the Bureau's specifications.

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27 ² The EGR functional test only applies to 1995 model-year and older vehicles undergoing
28 a two-speed idle test when equipped with EGR.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Provisions of the Motor Vehicle Inspection Program)**

3 23. Respondent Gudino's technician licenses are subject to discipline under Health and
4 Safety Code section 44072.2(a), in that on or about March 3, 2011, regarding the 1998 Ford
5 Explorer, he failed to comply with the following sections of that Code:

6 a. **Section 44012(f):** Respondent Gudino failed to properly perform a smog inspection
7 of the vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent Gudino failed to properly perform a smog inspection of
9 the vehicle in accordance with section 44012 of the Health and Safety Code.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations)**

12 24. Respondent Gudino's technician licenses are subject to discipline under Health and
13 Safety Code section 44072.2(c), in that on or about March 3, 2011, regarding the 1998 Ford
14 Explorer, he failed to comply with the following sections of the California Code of Regulations.
15 title 16:

16 a. **Section 3340.30(a):** Respondent Gudino failed to inspect and test the vehicle in
17 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
18 Regulations, title 16, section 3340.42.

19 b. **Section 3340.41(c):** Respondent Gudino entered false information into the EIS by
20 entering "pass" for the visual portion of the smog inspection when, in fact, the vehicle could not
21 have passed the visual portion of the inspection because the vehicle's MIL bulb and socket were
22 missing. In addition, Respondent entered "fail" for the EGR functional test when, in fact, that test
23 did not apply to this vehicle.

24 c. **Section 3340.42:** Respondent Gudino failed to properly conduct the required smog
25 tests and inspections on the vehicle in accordance with the Bureau's specifications.

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1 **UNDERCOVER OPERATION NO. 2: 1990 PLYMOUTH SUNDANCE**

2 25. On or about September 9, 2011, an undercover Bureau operator ("operator") drove
3 a Bureau documented 1990 Plymouth Sundance to Respondent E R's facility and requested a
4 smog inspection. The vehicle was capable of passing all portions of both California Emissions
5 Inspection Tests. The operator signed a work order and received a copy. Respondent Gudino
6 performed the smog inspection. Respondent Gudino entered "defective" into the EIS when, in
7 fact, it was not, and the vehicle was capable of passing all portions of both California Emissions
8 Inspection Tests. The operator paid Respondent E R \$39.75. The operator received a copy of
9 Invoice No. [REDACTED] and VIR.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Untrue or Misleading Statements)**

12 26. Respondent E R's registration is subject to discipline pursuant to Code section
13 9884.7(a)(1), in that on or about September 9, 2011, Respondent made or authorized statements
14 which he knew or in the exercise of reasonable care he should have known to be untrue or
15 misleading by generating an untrue or misleading VIR by entering "defective" into the EIS for the
16 functional inspection when, in fact, it was not, and the vehicle was capable of passing all portions
17 of both California Emissions Inspection Tests.

18 **SEVENTH CAUSE FOR DISCIPLINE**

19 **(Fraud)**

20 27. Respondent E R's registration is subject to discipline pursuant to Code section
21 9884.7(a)(4), in that on or about September 9, 2011, Respondent committed acts which constitute
22 fraud, in that Respondent obtained payment for a bona fide smog inspection, represented that he
23 had performed a bona fide inspection when, in fact, he had not. Respondent ER failed the vehicle
24 for the functional inspection when, in fact, the vehicle was capable of passing all portions of both
25 California Emissions Inspection Tests.

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1 **EIGHTH CAUSE FOR DISCIPLINE**

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

3 28. Respondent E R's station license is subject to discipline pursuant to Health &
4 Safety Code section 44072.2(a), in that on or about September 9, 2011, Respondent failed to
5 comply with the following sections of that Code:

6 a. **44012, subdivision (f):** Respondent failed to perform emission control tests on
7 the vehicle in accordance with procedures prescribed by the department.

8 b. **44015, subdivision (b):** Respondent failed to issue a certificate of compliance to
9 a vehicle that was capable of passing all portions of both California Emissions Inspection Tests.

10 **NINTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations)**

12 29. Respondent E R's station license is subject to discipline pursuant to Health &
13 Safety Code section 44072.2(c), in that on or about September 9, 2011, Respondent failed to
14 comply with California Code of Regulations, title 16, section 3340.42, in that Respondent failed
15 to conduct the required smog tests on the vehicle in accordance with the Bureau's specifications.

16 **TENTH CAUSE FOR DISCIPLINE**

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

18 30. Respondent E R's station license is subject to discipline under Health & Safety Code
19 section 44072.2(d), in that on or about September 9, 2011, Respondent committed dishonest,
20 fraudulent or deceitful acts whereby another was injured, in that Respondent obtained payment
21 for a bona fide smog inspection, represented that he had performed a bona fide inspection when,
22 in fact, he had not. In addition, Respondent failed the vehicle for the functional inspection when
23 the vehicle was capable of passing all portions of both California Emissions Inspection Tests.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

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

26 31. Respondent E R's lamp and brake station licenses are subject to discipline under
27 Code section 9889.3(d) in that Respondent committed an act involving dishonesty, fraud, or
28 deceit whereby another was injured, as set forth in paragraph 27 above.

1 **TWELFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Comply with Provisions of the Motor Vehicle Inspection Program)**

3 32. Respondent Gudino's technician licenses are subject to discipline under Health and
4 Safety Code section 44072.2(a), in that on or about September 9, 2011, regarding the 1990
5 Plymouth Sundance, Respondent failed to comply with the following sections of that Code:

6 a. **Section 44012(f):** Respondent Gudino failed to properly perform a smog inspection
7 of the vehicle in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent Gudino failed to properly perform a smog inspection of
9 the vehicle in accordance with section 44012 of the Health and Safety Code.

10 **THIRTEENTH CAUSE FOR DISCIPLINE**

11 **(Failure to Comply with Regulations)**

12 33. Respondent Gudino's technician licenses are subject to discipline under Health and
13 Safety Code section 44072.2(c), in that on or about September 9, 2011, regarding the 1990
14 Plymouth Sundance, Respondent failed to comply with the following sections of the California
15 Code of Regulations, title 16:

16 a. **Section 3340.30(a):** Respondent Gudino failed to inspect and test the vehicle in
17 accordance with Health and Safety Code sections 44012 and 44035, and California Code of
18 Regulations, title 16, section 3340.42.

19 b. **Section 3340.41(c):** Respondent Gudino entered false information into the EIS by
20 entering "defective" for the functional inspection when, in fact, the vehicle was capable of
21 passing all portions of both California Emissions Inspection Tests.

22 c. **Section 3340.42:** Respondent Gudino failed to properly conduct the required smog
23 tests and inspections on the vehicle in accordance with the Bureau's specifications.

24 **FOURTEENTH CAUSE FOR DISCIPLINE**

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

26 34. Respondent Gudino's technician licenses are subject to discipline under Health &
27 Safety Code section 44072.2(d), in that on or about September 9, 2011, he committed dishonest,
28 fraudulent or deceitful acts whereby another was injured by representing that he had performed a

1 bona fide smog inspection when, in fact, he did not. In addition, Respondent Gudino failed the
2 vehicle for the functional inspection when the vehicle was capable of passing all portions of both
3 California Emissions Inspection Tests.

4 **PRIOR CITATIONS**

5 35. To determine the degree of discipline, if any, Complainant alleges the following:

6 a. On or about January 3, 2007, the Bureau issued Citation No. C07-0430 against
7 Respondent E R's registration and station licenses for violations of Health and Safety Code
8 section 44012(f) (failure to perform a visual/functional check of emission control devices
9 according to procedures prescribed by the department), and California Code of Regulations, title
10 16, section 3340.35(c) (issuing a certificate of compliance to a vehicle that was improperly
11 tested), for issuing a certificate of compliance to a Bureau undercover vehicle that was missing an
12 air injection system reed valve. The Bureau assessed civil penalties totaling \$500 against
13 Respondent for the violations.

14 b. On or about March 17, 2011, the Bureau issued Citation No. C2011-1087
15 against Respondent E R's registration and station licenses for violations of Health and Safety
16 Code section 44012(f) (failure to perform a visual/functional check of emission control devices
17 according to procedures prescribed by the department), and California Code of Regulations, title
18 16, section 3340.42 (failure to follow Smog Check emissions test methods and standards), for
19 failing to perform a proper inspection on the Bureau undercover vehicle, in that it had a non-
20 functional Malfunction Indicator Lamp system. The Bureau assessed civil penalties totaling
21 \$1000 against Respondent for the violations.

22 **OTHER MATTERS**

23 36. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on
24 probation the registrations for all places of business operated in this state by Edward Derebenskiy,
25 doing business as E R Smogs, upon a finding that he has, or is, engaged in a course of repeated
26 and willful violation of the laws and regulations pertaining to an automotive repair dealer.

27 37. Pursuant to Health and Safety Code section 44072.8, if Smog Check Station
28 License Number RC 241005, issued to Edward Derehenskiy, doing business as E R Smogs, is

1 revoked or suspended, any additional license issued under this chapter in the name of said
2 licensee may be likewise revoked or suspended by the director.

3 38. Pursuant to Code section 9889.9, if Lamp Station License Number LS 241005,
4 issued to Edward Derebenskiy, doing business as E R Smogs, is revoked or suspended, any
5 additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions
6 Code in the name of said licensee may be likewise revoked or suspended by the director.

7 39. Pursuant to Code section 9889.9, if Brake Station License Number BS 241005,
8 issued to Edward Derebenskiy, doing business as E R Smogs, is revoked or suspended, any
9 additional license issued under Articles 5 and 6 of Chapter 20.3 of the Business and Professions
10 Code in the name of said licensee may be likewise revoked or suspended by the director.

11 40. Pursuant to Health and Safety Code section 44072.8, if Smog Check Inspector
12 license number FO 632708 or Smog Check Repair Technician License number EI 632708
13 (formerly Advanced Emission Specialist Technician License Number EA 632708) issued to Jose
14 Antonio Tejeda Gudino, are revoked or suspended, any additional license issued under this
15 chapter in the name of said licensee may be likewise revoked or suspended by the director.

16 **PRAYER**

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

19 1. Revoking, suspending, or placing on probation Automotive Repair Dealer
20 Registration No. ARD 241005, issued to Edward Derebenskiy, doing business as E R Smogs;

21 2. Revoking, suspending, or placing on probation any other automotive repair dealer
22 registration issued to Edward Derebenskiy;

23 3. Revoking or suspending Smog Check Station License Number RC 241005, issued
24 to Edward Derebenskiy, doing business as E R Smogs;

25 4. Revoking or suspending any additional license issued under chapter 5, of the
26 Health and Safety Code in the name of Edward Derebenskiy;

27 5. Revoking or suspending Lamp Station License Number LS 241005, issued to
28 Edward Derebenskiy, doing business as E R Smogs;

1 6. Revoking or suspending Brake Station License Number BS 241005, issued to
2 Edward Derebenskiy, doing business as E R Smogs;

3 7. Revoking or suspending any additional license issued under Articles 5 and 6 of
4 Chapter 20.3 of the Business and Professions Code in the name of Edward Derebenskiy;

5 8. Revoking or suspending Smog Check Inspector License Number EO 632708, and
6 Smog Check Repair Technician License Number EI 632708 (formerly Advanced Emission
7 Specialist Technician License Number EA 632708), issued to Jose Antonio Tejada Gudino;

8 9. Revoking or suspending any additional license issued under Chapter 5 of the
9 Health and Safety Code in the name of Jose Antonio Tejada Gudino;

10 10. Ordering Edward Derebenskiy and Jose Antonio Tejada Gudino, to pay the
11 Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this
12 case, pursuant to Code section 125.3; and,

13 11. Taking such other and further action as deemed necessary and proper.

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16 DATED: 8/20/16

Patrick Dorais
Acting Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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