

BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**Y S T UNOCAL, INC.**  
**dba Y S 76 AUTO CARE**  
801 South Hoover Street  
Los Angeles, California 90005-1202  
SUNG BEA LEE, President

Automotive Repair Dealer Registration  
No. ARD 182000  
Smog Check Station License No. RC 182000

Respondent.

Case No. 79/09-67

OAH No. L2009050736

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter.

The suspension of Smog Check Station License No. RC 182000 shall commence on the effective date of this decision.

This Decision shall become effective \_\_\_\_\_ 12/11/09 \_\_\_\_\_.

IT IS SO ORDERED this \_\_\_\_\_ 2nd \_\_\_\_\_ day of \_\_\_\_\_ December \_\_\_\_\_, 2009.

  
\_\_\_\_\_  
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

Y S T UNOCAL, INC., doing  
business as  
Y S 76 AUTO CARE  
801 South Hoover Street  
Los Angeles, California 90005-1202  
SUNG BEA LEE, President

Automotive Repair Dealer Registration  
No. ARD 182000  
Smog Test Station License  
RC 182000

Respondent.

Case No. 79/09-67

OAH No. L2009050736

**PROPOSED DECISION**

The hearing in this matter was held on October 13, 2009, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided. Complainant was represented by Heather Hua, Deputy Attorney General. Mr. Sung Bea Lee appeared on behalf of the Respondent.

Evidence was received, and the case was submitted for decision on the hearing date. The ALJ makes the following factual findings, legal conclusions, and orders.

**FACTUAL FINDINGS**

*The Parties and Jurisdiction:*

1. Complainant Sherry Mehl filed the Accusation in the above-captioned matter while acting in her official capacity as Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs (Department). The Bureau is authorized by law to license and regulate persons and firms that repair automobiles, and those who inspect, test, and repair vehicle emissions control systems. Under the law, the Bureau may take disciplinary

action against those licensees who violate specific statutes and regulations governing the licensed activities.

2. (A) On April 7, 1995, the Bureau issued Automotive Repair Dealer Registration (ARD) Number ARD 182000 to Respondent Y S T Unocal, Inc., doing business as Y S 76 Auto Care. That business is conducted in Los Angeles, California. Respondent's ARD license will expire on January 31, 2010, unless otherwise renewed. Mr. Sung Bea Lee is the president of the Respondent corporation.

(B) On April 18, 1995, the Bureau issued Smog Check Station License number RC 182000 to Respondent. That license will also expire on January 31, 2010, unless renewed.

3. The Accusation in the above-captioned matter was issued on January 27, 2009. By it, Complainant seeks the suspension or revocation, or other discipline, of Respondent's licenses, on the grounds that it had undertaken a smog check in August 2008, which was improperly performed. Complainant asserts that such discipline is proper in that the Bureau had cited Respondent on three occasions during the 18 months prior to the inspection giving rise to this matter. Respondent filed a timely notice of defense, and at the hearing it provided testimony and evidence regarding the penalty, if any, that might be imposed. All jurisdictional requirements have been met.

*The Undercover Inspection of August 26, 2008:*

4. On August 26, 2008, an undercover operative in the employ of the Bureau drove a 1995 Chrysler to Respondent's facility, and he requested a smog check on the car. The vehicle had been modified by the Bureau—"induced" in the Bureau's parlance—so that it should not pass an inspection. Specifically, the Bureau staff modified the Chrysler by removing the PCV (Positive Crankcase Ventilation) system from the engine. The PCV system is a necessary element in the vehicle's emission control system. It takes air from the crankcase of the engine, which can become polluted in the operation of the engine, and channels that air into the engine's air-intake system, so that harmful gases in the crankcase can be burned.

5. One of the three components of a proper smog check is a visual inspection of the engine, to verify that all required equipment is attached to the engine and properly connected to the appropriate components. In the case of the subject Chrysler, the smog check technician was required to conduct a visual inspection of the engine, to determine that the fuel PCV system is in place and properly connected to the engine.

6. Respondent's employee technician, Tommy J. Lee, conducted the inspection of the vehicle and passed it. In the Vehicle Inspection Report (VIR), he stated that the PCV system passed inspection, when it should not have. The Bureau's operative paid for the smog inspection, obtained paperwork from Respondent, and returned the Chrysler to a Bureau investigator.

7. After inspecting the Chrysler, Respondent, through Tommy Lee, issued a certificate of compliance for the car, number NC 985430. That certificate was based on false information—that the car had passed the visual inspection—and Respondent should not have issue the certificate of compliance.

*Previous Citations Against Respondent:*

8. Respondent was cited by the Bureau for improper inspections in January and July 2007, and in March 2008.<sup>1</sup> It is reasonably inferred that in each of those cases, fines were assessed and further training was ordered.

9. On January 17, 2007, the Bureau sent a documented 1992 Toyota to Respondent in an undercover operation. Sung Bea Lee performed a smog test on the vehicle, but he failed to discern that the timing was not properly set. Although the engine timing was outside of proper specifications, he passed the car and issued a certificate of compliance. Therefore, he and the Respondent were cited by the Bureau.

10. On July 18, 2007, the Bureau conducted an undercover inspection of Respondent's licensed activities, by sending a 1992 Toyota to the facility with an undercover driver. The Fuel Evaporative System had been removed from the car before it was taken to Respondent. Tommy Lee inspected the car and passed it, failing to discover that a required component was missing from the engine. Therefore, Respondent and Tommy Lee were cited by the Bureau.

11. On March 12, 2008, in an undercover operation, a Bureau operative took a 1992 Plymouth to Respondent and obtained a smog check. The vehicle had been modified by Bureau personnel so that the timing was set beyond proper specifications, and therefore it could not pass an inspection. Tommy Lee inspected the car and failed to discover that the timing was not to specifications, and he did not remedy the problem. He did pass the car, issuing a certificate of compliance when such should have been withheld. He and Respondent were cited.

*Respondent's Contentions and Other Findings:*

12. Mr. Sung Lee testified that he has worked in the auto repair field for approximately 35 years, having been licensed for over 15 of those years. His son, Tommy Lee, performed the August 2008 inspection; Mr. Lee had not seen the car.

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A fourth citation, from 1996, was pleaded, but at the hearing Complainant declined to assert it as a basis for discipline.

13. Mr. Lee testified that his son is no longer working for the Respondent. The firm has never been disciplined regarding other aspects of automotive repair, but only for problems arising out of the smog checks. His firm employs three or four mechanics, and it is an Auto Club repair facility. The automotive repair trade is all that Mr. Lee knows.

14. The Bureau incurred costs in the investigation and prosecution of this matter totaling \$13,555.05. There being no objection to the claimed costs or evidence submitted to contradict the claim, the sum is deemed reasonable.

### LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 9884.7 and 9884.13 of the Business and Professions Code<sup>2</sup>, and sections 44002, 44072.2, 44072.6, and 44072.8 of the Health and Safety Code, based on Factual Findings 1 through 3.

2. Health and Safety Code section 44032 requires smog check technicians to perform smog tests in compliance with section 44012. Section 44012, subdivision (f), provides that a visual or functional check must be made of emission control devices specified by the Bureau, and in compliance with procedures prescribed by the Bureau.

3. California Code of Regulations (CCR), title 16, section 3340.30, subdivision (a),<sup>3</sup> requires a smog technician to comply with section 44012, and with section 44035, which states that technicians can be disciplined, and must allow the Bureau access to licensed facilities, records, and equipment. The regulation also mandates compliance with CCR section 3340.42.

4. Respondent violated Health and Safety Code section 44012, subdivision (a), by failing to determine that all emission control devices and systems required by law were installed and functioning properly in accordance with test procedures when it inspected a Chrysler automobile on August 26, 2008. This Conclusion is based on Factual Findings 4 through 7.

5. Respondent violated section Health and Safety Code section 44012, subdivision (f), by failing to perform a visual or functional check of emission control devices according to prescribed procedures, which also constituted a violation of CCR section 3340.42. This Conclusion is based on Factual Findings 4 through 7.

6. Respondent violated section Health and Safety Code section 44015, subdivision (b), by issuing a certificate of compliance for a Chrysler on August 26, 2008, without

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<sup>2</sup> All further statutory references shall be to the Business and Professions Code, cited as Code, unless otherwise noted.

<sup>3</sup> All further references to the CCR shall be to title 16.

properly testing that vehicle, which also constituted a violation of CCR sections 3340.35, subdivision (c), and 3340.42. This Conclusion is based on Factual Findings 4 through 7.

7. Respondent violated section 44059 of the Health and Safety Code by willfully making false entries for an electronic certificate of compliance, certifying a proper inspection when that had not occurred. This Conclusion is based on Factual Findings 4 through 7.

8. Respondent violated section 9884.7, subdivision (a)(1), by making statements which it knew, or in the exercise of reasonable care should have known, to be untrue, by issuing a vehicle inspection report and certificate of compliance on August 26, 2008, which represented that a Chrysler automobile had been properly inspected and that it complied with applicable vehicle emissions regulations. This Conclusion is based on Factual Findings 4 through 7, and Legal Conclusions 2 through 7.

9. It was not established that Respondent engaged in fraudulent conduct in the issuance of the inaccurate certificate of compliance on August 26, 2008. While it is established that Respondent's employee failed to note the absence of the PCV system on the subject vehicle, the record does not disclose whether this was the result of some inefficiency or mistake of the technician, or as the result of an intent to defraud. Likewise, it has not been established that the acts of Respondent, by its technician, amounted to dishonesty, fraud or deceit in violation of Health and Safety Code section 44072.2.

10. Cause exists to discipline Respondent's ARD and Smog Check Station license based on Legal Conclusions 1 through 8, and their factual predicates.

11. Cause exists, pursuant to section 123.5, to order Respondent to pay the Board its reasonable costs in the amount of \$13,555.05, based on Legal Conclusions 1 through 8, and 10, and Factual Finding 14.

12. The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. The problems with Respondent's licensed activities appear confined to the smog check business, and three of the four problem inspections were performed by one employee, no longer with the firm. As noted in Legal Conclusion 9, it can not be determined, on this record, that the employee intended to defraud any party; it is just as likely that he is inefficient or careless in the discharge of his duties. In the circumstances, it appears that a suspension of the smog check license, and a period of probation, will be sufficient to bring about compliance by Respondent, while protecting the public. Such a disciplinary order is within the disciplinary guidelines established by the Bureau.

### **ORDER**

1. The Automotive Repair Dealer Registration issued to Respondent Y S T Unocal, Inc., doing business as Y S 76 Auto Care, Number ARD 182000, is hereby suspended for 90

days, but that order is hereby stayed and Respondent placed on probation for a period of two years, the terms of which are set forth below.

2. The Smog Check Station License, number RC 182000, issued to Respondent Y S T Unocal, Inc., doing business as Y S 76 Auto Care, is hereby suspended for 180 days; provided, however, that 150 days of that suspension is hereby stayed, and the smog check station license placed on probation, subject to the following terms and conditions:

3. During the period of probation, Respondent(s) shall:

a. Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

b. Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

c. Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

d. Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have in any other business required to be registered pursuant to Section 9884.6 of the Business and Professions Code.

e. Provide Bureau representatives unrestricted access to inspect all vehicles (including parts) undergoing repairs, up to and including the point of completion.

f. If an accusation is filed against Respondent during the term of probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter until the final decision on the accusation, and the period of probation shall be extended until such decision.

g. Should the Director of Consumer Affairs determine that Respondent has failed to comply with the terms and conditions of probation, the Department may, after giving notice and opportunity to be heard set aside the order staying the suspension of Respondent's ARD and Smog Check Station license.

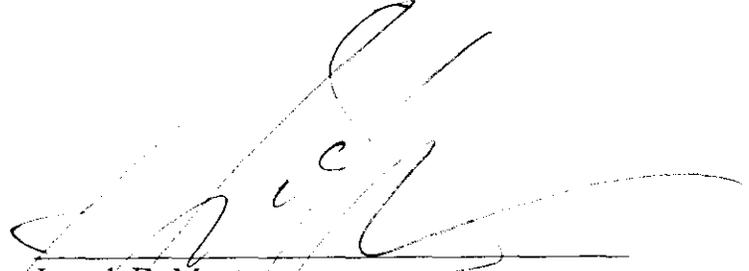
h. During the period of probation, Respondent shall not perform any form of smog inspection, or emission system diagnosis or repair, until Respondent has purchased, installed, and maintained the diagnostic and repair equipment prescribed by the Bureau

necessary to properly perform such work, and the Bureau has been given 10 days notice of the availability of the equipment for inspection by a Bureau representative.

4. Respondent shall pay the sum of \$13,555.05 to the Bureau within 60 days of the effective date of this order, unless the Bureau agrees to a payment schedule.

5. Upon completion of the probation term, Respondent's ARD and Smog Check Station license shall be fully restored.

November 16, 2009



Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 79/09-67

12 **Y S T UNOCAL, INC., DBA**  
13 **Y S 76 AUTO CARE**  
801 S. Hoover Street  
Los Angeles, California 90005-1202  
14 **SUNG BEA LEE, PRESIDENT**

**A C C U S A T I O N**  
**S M O G C H E C K**

15 Automotive Repair Dealer Registration  
No. ARD 182000  
16 Smog Check Station License No. RC 182000

17 Respondent.

18  
19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the  
22 Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

23 **Automotive Repair Dealer Registration**

24 2. On or about April 7, 1995, the Bureau issued Automotive Repair Dealer  
25 Registration Number ARD 182000 ("registration") to Y S T Unocal, Inc. ("Respondent") doing  
26 business as Y S 76 Auto Care with Sung Bea Lee as President. The registration will expire on  
27 January 31, 2009, unless renewed.

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1 **Smog Check Station License**

2 3. On or about April 18, 1995, the Bureau issued Smog Check Station  
3 License Number RC 182000 ("station license") to Respondent. The station license will expire on  
4 January 31, 2009, unless renewed.

5 **STATUTORY PROVISIONS**

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

8 (a) The director, where the automotive repair dealer cannot show there was  
9 a bona fide error, may refuse to validate, or may invalidate temporarily or  
10 permanently, the registration of an automotive repair dealer for any of the  
11 following acts or omissions related to the conduct of the business of the  
12 automotive repair dealer, which are done by the automotive repair dealer or any  
13 automotive technician, employee, partner, officer, or member of the automotive  
14 repair dealer.

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

19 (4) Any other conduct which constitutes fraud.

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

27 (c) Notwithstanding subdivision (b), the director may invalidate  
28 temporarily or permanently, 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.

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

7 6. Code section 477 provides, in pertinent part, that "Board" includes  
8 "bureau," "commission," "committee," "department," "division," "examining committee,"

1 “program,” and “agency.” “License” includes certificate, registration or other means to engage  
2 in a business or profession regulated by the Code.

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

6 8. Section 44072.2 of the Health & Safety Code states, in pertinent part:

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

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

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

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

17 9. Section 44072.6 of the Health & Safety Code provides, in pertinent part,  
18 that the expiration or suspension of a license by operation of law, or by order or decision of the  
19 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall  
20 not deprive the Director of jurisdiction to proceed with disciplinary action.

21 10. Section 44072.8 of the Health & Safety Code states:

22 “When a license has been revoked or suspended following a hearing under this  
23 article, any additional license issued under this chapter in the name of the licensee may be  
24 likewise revoked or suspended by the director.”

### 25 COST RECOVERY

26 11. Code section 125.3 provides, in pertinent part, that a Board may request  
27 the administrative law judge to direct a licentiate found to have committed a violation or  
28 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
and enforcement of the case.

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1           b.     Section 3340.35, subdivision (c): Respondent issued electronic  
2 Certificate of Compliance No. NC985430 for that vehicle even though the vehicle had not been  
3 inspected in accordance with section 3340.42.

4           c.     Section 3340.42: Respondent failed to conduct the required smog tests on  
5 that vehicle in accordance with the Bureau's specifications.

6                                   **FIFTH CAUSE FOR DISCIPLINE**

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

8           17.     Respondent's station license is subject to disciplinary action pursuant to  
9 Health & Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2008,  
10 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by  
11 issuing electronic Certificate of Compliance No. NC985430 for the 1995 Chrysler Sebring  
12 without performing a bona fide inspection of the emission control devices and systems on the  
13 vehicle, thereby depriving the People of the State of California of the protection afforded by the  
14 Motor Vehicle Inspection Program.

15                                   **PRIOR CITATIONS**

16           18.     To determine the degree of discipline, if any, to be imposed on  
17 Respondents, Complainant alleges as follows:

18           a.     On or about July 16, 1996, the Bureau issued Citation No. C96-0476  
19 against Respondent's registration and station licenses for violations of Health & Safety Code  
20 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
21 devices according to procedures prescribed by the department), and California Code of  
22 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of  
23 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a  
24 Bureau undercover vehicle with a non functional exhaust gas recirculation system. The Bureau  
25 assessed civil penalties totaling \$250 against Respondent for the violations. Respondent  
26 complied with this citation on August 12, 1996.

27           b.     On or about January 29, 2007, the Bureau issued Citation No. C07-0490  
28 against Respondent's registration and station licenses for violations of Health & Safety Code

1 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control  
2 devices according to procedures prescribed by the department), and California Code of  
3 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of  
4 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a  
5 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's  
6 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the  
7 violations. Respondent complied with this citation on April 10, 2007.

8 c. On or about July 27, 2007, the Bureau issued Citation No.  
9 C08-0068 against Respondent's registration and station licenses for violations of Health & Safety  
10 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
11 control devices according to procedures prescribed by the department), and California Code of  
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of  
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a  
14 Bureau undercover vehicle with a missing fuel evaporative system. The Bureau assessed civil  
15 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this  
16 citation on October 22, 2007.

17 d. On or about March 20, 2008, the Bureau issued Citation No.  
18 C08-0820 against Respondent's registration and station licenses for violations of Health & Safety  
19 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission  
20 control devices according to procedures prescribed by the department), and California Code of  
21 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of  
22 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a  
23 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's  
24 specifications. The Bureau assessed civil penalties totaling \$2,000 against Respondent for the  
25 violations. Respondent complied with this citation on May 1, 2008.

26 **OTHER MATTERS**

27 19. Pursuant to Code section 9884.7, subdivision (c), the Director may  
28 invalidate temporarily or permanently, the registrations for all places of business operated in this



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7. Ordering Y S T Unocal, Inc. to pay the Director of Consumer Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

DATED: 1/27/09

  
\_\_\_\_\_  
SHERRY MEHL  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant