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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 Amended Accusation  
Against:  
12 **ASHTON, CASELLA & ASSOCIATES,**  
13 **INC., d.b.a. PACIFIC SMOG,**  
14 **KENNETH ASHTON, President**  
2039 Del Monte Blvd.  
Seaside, CA 93955  
15  
26966 Laureles Grade Road  
16 Carmel Valley, CA 93924  
17 Automotive Repair Dealer Registration No.  
ARD 214292  
18 Smog Check, Test Only, Station License No.  
TC 214292  
19  
20 Respondent.

Case No. 79/14-116

**AMENDED ACCUSATION**

21 Complainant alleges:

22 **PARTIES**

23  
24 1. Patrick Dorais (Complainant) brings this Amended Accusation solely in his official  
25 capacity as the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

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1 the customer. The bureau may specify in regulation the procedures to be followed  
2 by an automotive repair dealer when an authorization or consent for an increase in  
3 the original estimated price is provided by electronic mail or facsimile  
4 transmission. If that consent is oral, the dealer shall make a notation on the work  
order of the date, time, name of person authorizing the additional repairs and  
telephone number called, if any, together with a specification of the additional  
parts and labor and the total additional cost . . .

5 11. Section 477 of the Code provides, in pertinent part, that "Board" includes "bureau,"  
6 "commission," "committee," "department," "division," "examining committee," "program," and  
7 "agency." "License" includes certificate, registration or other means to engage in a business or  
8 profession regulated by the Code.

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

12 13. Section 44012 of the Health and Safety Code states:

13 The test at the smog check stations shall be performed in accordance with  
14 procedures prescribed by the department, pursuant to Section 44013, shall require,  
15 at a minimum, loaded mode dynamometer testing in enhanced areas, and  
two-speed testing in all other program areas, and shall ensure all of the following:

16 . . .

17 "(f) A visual or functional check is made of emission control devices  
18 specified by the department, including the catalytic converter in those instances in  
which the 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.

19 . . .

20 14. Section 44015(b) of the Health and Safety Code states:

21 "If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
22 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

23 15. Section 44032 of the Health and Safety Code states:

24 "No person shall perform, for compensation, tests or repairs of emission control devices or  
25 systems of motor vehicles required by this chapter unless the person performing the test or repair  
26 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
27 station. Qualified technicians shall perform tests of emission control devices and systems in  
28 accordance with Section 44012."

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16. 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."

17. Section 44072.2 of the Health and Safety Code states:

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 Saf. 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.

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

...

18. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:

"A smog check technician shall comply with the following requirements at all times while licensed.

(a) A licensed technician shall inspect, test and repair vehicles 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.

..."

19. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

"(c) A licensed station shall issue a certificate of compliance or noncompliance 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. The following conditions shall apply:

"(1) Customers shall be charged the same price for certificates as that paid by the licensed station; and





1 regarding the 1988 Honda, it failed to comply with the following sections of that Code:

2 a. **Section 44012, subdivision (f):** Respondent Pacific Smog failed to perform  
3 emission control inspections on the vehicle in accordance with procedures prescribed by the  
4 department.

5 b. **Section 44015, subdivision (b):** Respondent Pacific Smog issued electronic  
6 Certificate of Compliance No. [REDACTED] for the vehicle without properly inspecting the vehicle  
7 to determine if it was in compliance with Health & Safety Code section 44012.

8 **FIFTH CAUSE FOR DISCIPLINE**

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

10 28. Respondent Pacific Smog's station license is subject to discipline pursuant to Health  
11 & Safety Code section 44072.2, subdivision (c), in that on or about December 4, 2013, regarding  
12 the 1988 Honda, it failed to comply with provisions of California Code of Regulations, title 16, as  
13 follows:

14 a. **Section 3340.35, subdivision (c):** Respondent Pacific Smog issued electronic  
15 Certificate of Compliance No. [REDACTED] for the vehicle even though the vehicle had not been  
16 inspected in accordance with section 3340.42.

17 b. **Section 3340.41, subdivision (c):** Respondent Pacific Smog entered false  
18 information into the Emission Inspection System unit by entering "Pass" for the visual portion of  
19 the inspection when, in fact, the vehicle's Air Injection System was missing.

20 c. **Section 3340.42:** Respondent Pacific Smog failed to perform an emission control  
21 inspection on the vehicle in accordance with procedures prescribed by the department.

22 **SIXTH CAUSE FOR DISCIPLINE**

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

24 29. Respondent Pacific Smog's station license is subject to discipline pursuant to Health  
25 & Safety Code section 44072.2, subdivision (d), in that on or about December 4, 2013, regarding  
26 the 1988 Honda, it committed dishonest, fraudulent or deceitful acts whereby another is injured  
27 by issuing electronic Certificate of Compliance No. [REDACTED] for the vehicle without performing  
28 a bona fide inspection of the emission control devices and systems on the vehicle, thereby

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

3 **PRIOR CITATIONS**

4 30. To determine the degree of discipline, if any, to be imposed on the Respondent  
5 Pacific Smog, Complainant alleges the following:

6 a. On or about October 5, 2009, the Bureau issued Citation No. C2010-0330 against  
7 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$500.00 against  
8 Respondent Pacific Smog for the violations. Respondent complied with this citation on  
9 November 2, 2009.

10 b. On or about June 28, 2012, the Bureau issued Citation No. C2012-1868 against  
11 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$1500.00 against  
12 Respondent Pacific Smog for the violations. Respondent complied with this citation on July 20,  
13 2012.

14 c. On or about February 22, 2013, the Bureau issued Citation No. C2013-0562 against  
15 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$2500.00 against  
16 Respondent Pacific Smog for the violations. Respondent complied with this citation on April 4,  
17 2013.

18 d. On or about July 17, 2013, the Bureau issued Citation No. C2014-0040 against  
19 Respondent Pacific Smog. The Bureau assessed civil penalties totaling \$3500.00 against  
20 Respondent Pacific Smog for the violations. Respondent complied with this citation on August  
21 23, 2013.

22 **DISCIPLINE CONSIDERATIONS**

23 31. To determine the degree of discipline, if any, to be imposed on Respondent Pacific  
24 Smog, Complainant alleges that on or about June 20, 2007, in a prior disciplinary action entitled  
25 *In the Matter of the Accusation Against Respondent Ashton Casella & Associates, INC, d.b.a.*  
26 *Pacific Smog, Kenneth William Ashton, President*, before the Bureau of Automotive Repair, in  
27 Case Number 79/07-26, Respondent's Automotive Dealer Registration and Smog Check Station  
28 License were revoked, stayed, and placed on probation for three years. The Smog Check Station

1 License was suspended for 12 days, and Respondent was ordered to pay cost recovery in the  
2 amount of \$5,000.00. That decision is now final and is incorporated by reference as if fully set  
3 forth.

4 **OTHER MATTERS**

5 32. Pursuant to Code section 9884.7(c), the director may suspend, revoke, or place on  
6 probation the registrations for all places of business operated in this state by Pacific Smog,  
7 Kenneth Ashton - President, upon a finding that he has, or is, engaged in a course of repeated and  
8 willful violation of the laws and regulations pertaining to an automotive repair dealer.

9 33. Pursuant to Health and Safety Code section 44072.8, if Smog Check Test Only  
10 Station License Number TC 214292, issued to Ashton, Casella and Associates, Inc., Kenneth  
11 Ashton - President, doing business as Pacific Smog, is revoked or suspended, any additional  
12 license issued under this chapter in the name of said licensees may be likewise revoked or  
13 suspended by the director.

14 **PRAYER**

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

17 1. Revoking, suspending, or placing on probation Automotive Repair Dealer  
18 Registration No. ARD 214292, issued to Ashton, Casella and Associates, Inc., Kenneth Ashton -  
19 President, doing business as Pacific Smog;

20 2. Revoking, suspending, or placing on probation any other automotive repair dealer  
21 registration issued to Ashton, Casella and Associates, Inc., Kenneth Ashton - President;

22 3. Revoking or suspending Smog Check Test Only Station License Number TC 214292,  
23 issued to Ashton, Casella and Associates, Inc., Kenneth Ashton - President, doing business as  
24 Pacific Smog;

25 4. Revoking or suspending any additional license issued to Ashton, Casella and  
26 Associates, Inc., Kenneth Ashton - President under Chapter 5 of the Health and Safety Code,  
27 pursuant to Health and Safety Code section 44072.8;

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8. Ordering Ashton, Casella and Associates, 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,

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

DATED: April 21, 2014

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

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