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

10
11 In the Matter of the Accusation Against:

Case No. 79/15-117

12 **VICENTE CANCINO DBA FAST PASS**
13 **TEST ONLY**
14 **1452 Long Beach Blvd., Unit C**
Long Beach, CA 90813

ACCUSATION

15 **Automotive Repair Dealer Registration No.**
ARD 266539
16 **Smog Check, Test Only, Station License No.**
TC 266539

17 **and**

18 **VICENTE CANCINO**
19 **3333 Fashion Ave.**
Long Beach, CA 90810

20 **Smog Check Inspector (EO) License No.**
21 **633791**

22 Respondent.

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24 Complainant alleges:

25 **PARTIES**

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

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1 6 of this chapter in the name of the licensee may be likewise revoked or suspended by the
2 director.”

3 12. Section 44012 of the HSC provides, in pertinent part, that tests at smog check stations
4 shall be performed in accordance with procedures prescribed by the department.

5 13. Section 44015, subdivision (b), of the HSC provides that a certificate of compliance
6 shall be issued if a vehicle meets the requirements of HSC section 40012.

7 14. Section 44032 of the HSC states, in pertinent part, that: (1) no person may perform
8 tests or repairs of emission control devices or systems of motor vehicles required by the Motor
9 Vehicle Inspection Program unless the person performing the test or repair is a licensed qualified
10 smog check technician; and (2) all tests must be conducted in accordance with section 44012 (i.e.
11 Motor Vehicle Inspection Program Requirements).

12 15. Section 44059 of the HSC provides:

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

17 16. Section 44072.2 of the HSC states, in pertinent part:

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

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

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

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

27 “(e) Has misrepresented a material fact in obtaining a license.

28 “(f) Aids or abets unlicensed persons to evade the provisions of this chapter.”

1 17. Section 44072.8 of the HSC states that when a license has been revoked or suspended
2 following a hearing under this article, any additional license issued under this chapter in the name
3 of the licensee may be likewise revoked or suspended by the director.

4 **REGULATORY PROVISIONS**

5 18. California Code of Regulations, title 16, section 3340.15, subdivision (b), states, in
6 pertinent part, that “[a] licensed inspector and/or repair technician shall be present during all
7 hours the station is open for the business.”

8 19. California Code of Regulations (“CCR”), title 16, section 3340.24, subdivision (c),
9 states:

10 “The bureau may suspend or revoke the license of or pursue other legal action against a
11 licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a
12 certificate of noncompliance.”

13 20. CCR, title 16, section 3340.35, subdivision (c), states that a licensed smog check
14 station “shall issue a certificate of compliance or noncompliance to the owner or operator of any
15 vehicle that has been inspected in accordance with the procedures specified in section 3340.42 of
16 this article and has all the required emission control equipment and devices installed and
17 functioning correctly.”

18 21. CCR, title 16, section 3340.41, subdivision (b), provides: “No person shall enter into
19 the emissions inspection system any access or qualification number other than as authorized by
20 the bureau, nor in any way tamper with the emissions inspection system.”

21 22. CCR, title 16, section 3340.42, sets forth specific emissions test methods and
22 procedures which apply to all vehicles inspected in the State of California.

23 **COST RECOVERY**

24 23. Section 125.3, subdivision (a), of the BPC provides, in pertinent part, that a Board
25 “may request the administrative law judge to direct a licentiate found to have committed a
26 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case.”

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STATION SURVEILLANCE DOCUMENTS "CLEAN PIPING"

24. On or about October 8 and December 11, 2014, Bureau program representatives Nicholas H. Magana and Marc Ortega performed video-taped surveillance of Respondent's smog check station that revealed that Respondent is regularly involved in fraudulently certifying vehicles through the illegal practice of "clean piping."² Specifically, the surveillance operation and information obtained from the Bureau's VID revealed that during those two (2) days of surveillance Respondent issued five (5) fraudulent certificates of compliance to vehicles that were not actually inspected. The Bureau program representatives observed, and the surveillance video confirms, that Respondent used his own 1998 Ford Mustang to fraudulently certify the five (5) vehicles. In each instance, Respondent engaged in the illegal conduct of clean piping by using the tailpipe emissions from his Mustang to certify entirely different vehicles.

The following chart ("Table 1") illustrates the clean piping activities observed during the Bureau's surveillance of Respondent's smog check station on October 8 and December 11, 2014.

Table 1

Test Date and Time	Vehicle Certified & License No.	Vehicle Actually Tested & License No.	Certificate Issued	Details
10/8/2014 0830 to 0840 hours	1990 Toyota Corolla CA LIC# 2UID943	Respondent's 1998 Ford Mustang in Test Bay at Time of Inspection	YL036392C (Certificate is in series purchased by Respondent)	Vehicle not in test bay at time it was certified. Respondent is present and his license used to fraudulently certify vehicle.

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² "Clean piping" is sampling the (clean) tailpipe emissions and/or the RPM readings of another vehicle for the purpose of illegally issuing smog certifications to vehicles that are not in compliance or are not present in the smog check area during the time of the certification.

1	10/8/2014	1993 GMC Safari	Respondent's 1998 Ford Mustang in Test Bay at Time of Inspection	YL036393C (Certificate is in series purchased by Respondent)	Vehicle not in test bay at time it was certified. Respondent is present and his license used to fraudulently certify vehicle.
2	0844 to	CA LIC# 4HEE854			
3	0852 hours				
4					
5					
6	12/11/2014	1998 Toyota Camry	Respondent's 1998 Ford Mustang in Test Bay at Time of Inspection	YN027850C (Certificate is in series purchased by Respondent)	Vehicle not in test bay at time it was certified. Respondent is present and his license used to fraudulently certify vehicle.
7	1816 to	CA LIC# 3XIF926			
8	1824 hours				
9					
10					
11	12/11/2014	1996 Ford Aerostar	Respondent's 1998 Ford Mustang in Test Bay at Time of Inspection	YN070501C (Certificate is in series purchased by Respondent)	Vehicle not in test bay at time it was certified. Respondent is present and his license used to fraudulently certify vehicle.
12	1831 to	CA LIC# 4ZZK015			
13	1902 hours				
14					
15					
16	12/11/2014	2003 Ford Focus	Respondent's 1998 Ford Mustang in Test Bay at Time of Inspection	YN070502C (Certificate is in series purchased by Respondent)	Vehicle not in test bay at time it was certified. Respondent is present and his license used to fraudulently certify vehicle.
17	1907 to	CA LIC# 5VMK624			
18	1912 hours				
19					
20					

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

25. Respondent has subjected his registration to discipline under BPC section 9884.7, subdivision (a)(1), in that he made statements which he knew or which by exercise of reasonable care should have known were untrue or misleading when he issued electronic certificates of compliance for the vehicles set forth in Table I, above, certifying that those vehicles were in

1 compliance with applicable laws and regulations when, in fact, those vehicles had not been so
2 inspected.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Fraud)**

5 26. Respondent has subjected his registration to discipline under BPC section 9884.7,
6 subdivision (a)(4), in that he committed acts which constitute fraud by issuing electronic
7 certificates of compliance for the vehicles set forth in Tables 1, above, without performing bona
8 fide inspections of the emission control devices and systems on those vehicles, thereby depriving
9 the People of the State of California of the protection afforded by the Motor Vehicle Inspection
10 Program.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Material Violation of Automotive Repair Act)**

13 27. Respondent has subjected his registration to discipline under BPC section 9884.7,
14 subdivision (a)(6), in that he failed in a "material respect to comply with the provisions of this
15 chapter or regulations adopted pursuant to it" when he issued electronic certificates of compliance
16 for the vehicles set forth in Table 1, above, without performing bona fide inspections of the
17 emission control devices and systems on those vehicles, thereby depriving the People of the State
18 of California of the protection afforded by the Motor Vehicle Inspection Program.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violation of the Motor Vehicle Inspection Program)**

21 28. Respondent has subjected his station license to discipline under HSC section 44072.2,
22 subdivision (a), in that, with respect to the vehicles set forth in Table 1, above, Respondent
23 violated the following sections of the HSC:

24 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
25 performed on those vehicles in accordance with procedures prescribed by the department.

26 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
27 compliance without properly testing and inspecting the vehicles to determine if they were in
28 compliance with section 44012 of the HSC.

1 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
2 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
3 had not.

4 **FIFTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 29. Respondent has subjected his station license to discipline under HSC section 44072.2,
7 subdivision (c), in that, with respect to the vehicles set forth in Table 1, above, Respondent
8 violated the following sections of title 16 of the CCR:

9 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
10 electronic certificates of compliance without performing bona fide inspections of the emission
11 control devices and systems on those vehicles as required by HSC section 44012.

12 b. **Section 3340.35, subdivision (c):** Respondent issued electronic certificates of
13 compliance even though those vehicles had not been inspected in accordance with section
14 3340.42 of the HSC.

15 c. **Section 3340.42:** Respondent failed to conduct the required smog tests and
16 inspections on those vehicles in accordance with the Bureau's specifications.

17 **SIXTH CAUSE FOR DISCIPLINE**

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

19 30. Respondent has subjected his station license to discipline under HSC section 44072.2,
20 subdivision (d), in that, with respect to the vehicles set forth in Table 1, above, Respondent
21 committed acts involving dishonesty, fraud or deceit whereby another was injured by issuing
22 electronic certificates of compliance for those vehicles without performing bona fide inspections
23 of the emission control devices and systems on those vehicles, thereby depriving the People of the
24 State of California of the protection afforded by the Motor Vehicle Inspection Program.

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1 **SEVENTH CAUSE FOR DISCIPLINE**

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

3 31. Respondent has subjected his smog check inspector license to discipline under HSC
4 section 44072.2, subdivision (a), in that he violated the following sections of the HSC with
5 respect to the vehicles set forth in Table, 1 above:

6 a. **Section 44012:** Respondent failed to ensure that the emission control tests were
7 performed on those vehicles in accordance with procedures prescribed by the department.

8 b. **Section 44032:** Respondent failed to perform tests of the emission control devices
9 and systems on those vehicles in accordance with section 44012 of the HSC, in that the vehicles
10 had been clean piped.

11 c. **Section 44059:** Respondent willfully made false entries for the electronic certificates
12 of compliance by certifying that those vehicles had been inspected as required when, in fact, they
13 had not.

14 **EIGHTH CAUSE FOR DISCIPLINE**

15 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

16 32. Respondent has subjected his smog check inspector license to discipline under HSC
17 section 44072.2, subdivision (c), in that he violated the following sections of the CCR, title 16,
18 with respect to the vehicles set forth in Table 1, above:

19 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
20 electronic certificates of compliance without performing bona fide inspections of the emission
21 control devices and systems on those vehicles as required by HSC section 44012.

22 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test those
23 vehicles in accordance with HSC section 44012.

24 c. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
25 for the electronic certificates of compliance by entering vehicle emission control information for
26 vehicles other than the vehicles being certified.

27 d. **Section 3340.42:** Respondent failed to conduct the required smog tests and
28 inspections on those vehicles in accordance with the Bureau's specifications.

1 **NINTH CAUSE FOR DISCIPLINE**

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

3 33. Respondent has subjected his smog check inspector license to discipline under HSC
4 section 44072.2, subdivision (d), in that he committed acts involving dishonesty, fraud or deceit
5 whereby another was injured by issuing electronic certificates of compliance for the vehicles set
6 forth in Table 1, above, without performing bona fide inspections of the emission control devices
7 and systems on those vehicles, thereby depriving the People of the State of California of the
8 protection afforded by the Motor Vehicle Inspection Program.

9 **PRAYER**

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

- 12 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
13 266539 to Vicente Cancino dba Fast Pass Test Only.
- 14 2. Revoking or suspending Smog Check, Test Only, Station License Number TC
15 266539 to Vicente Cancino dba Fast Pass Test Only;
- 16 3. Revoking or suspending Smog Check Inspector License No. EO 633791, issued to
17 Vicente Cancino;
- 18 4. Revoking or suspending any and all licenses issued under Articles 5 and 6 of the
19 Automotive Repair Act in the name of Vicente Cancino pursuant to section 9889.9 of the
20 Business and Professions Code;
- 21 5. Revoking or suspending any and all licenses issued under the Motor Vehicle
22 Inspection Program in the name of Vicente Cancino pursuant to section 44072.8 of the Health and
23 Safety Code;

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1 6. Ordering Vicente Cancino to pay the Bureau of Automotive Repair the reasonable
2 costs of the investigation and enforcement of this case, pursuant to Business and Professions
3 Code section 125.3;

4 7. Taking such other and further action as deemed necessary and proper.

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DATED: 6-12-15


for Patrick Dorais

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

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