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8

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

11
12 In the Matter of the Accusation Against:
13 **CENTRAL VALLEY SMOG**
JOSE SOTO DOMINGUEZ, OWNER
14 545 E. Dinuba
Reedley, California 93654
15
16 **Automotive Repair Dealer Registration No.**
ARD 270556
17 **Smog Check Station License No. RC 270556**
18 **and**
19 **JOSE SOTO DOMINGUEZ**
12257 Avenue 400
20 Cutler, California 93615
21 **Advanced Emission Specialist Technician**
License No. EA 634458 (to be re-designated
22 **upon renewal as EO 634458 and/or EI**
23 **634458),**

24 Respondents.

Case No.

79/14-57

A C C U S A T I O N

(Smog Check)

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1 Patrick Dorais (“Complainant”) alleges:

2 **PARTIES**

3 1. Complainant brings this Accusation solely in his official capacity as the Chief of the
4 Bureau of Automotive Repair (“Bureau”), Department of Consumer Affairs.

5 **Central Valley Smog; Jose Soto Dominquez, Owner**

6 2. On or about October 12, 2012, the Director of Consumer Affairs (“Director”) issued
7 Automotive Repair Dealer Registration Number ARD 270556 (“Registration”) to Jose Soto
8 Domingucz, Owner of Central Valley Smog (“Respondent”). The Registration was in full force
9 and effect at all times relevant to the charges brought herein and will expire on October 31, 2014,
10 unless renewed.

11 3. On or about November 1, 2012, the Director issued Smog Check Station License
12 Number RC 270556 (“Station License”) to Respondent. The Station License was in full force and
13 effect at all times relevant to the charges brought herein and will expire on October 31, 2014,
14 unless renewed.

15 **Jose Soto Dominquez**

16 4. On or about July 9, 2012, the Bureau of Automotive Repair issued Advanced
17 Emission Specialist Technician License Number EA 634458 (“Technician License”) to
18 Respondent. The Technician License is due to expire on January 31, 2014. Upon renewal of the
19 license, the license will be re-designated as EO 634458 and/or EI 634458¹.

20 **JURISDICTION**

21 5. Business and Professions Code (“Bus. & Prof. Code”) section 9884.7 provides that
22 the Director may revoke an automotive repair dealer registration.

23 6. Bus. & Prof. Code section 9884.13 provides, in pertinent part, that the expiration of a
24 valid registration shall not deprive the Director of jurisdiction to proceed with a disciplinary
25

26 ¹ Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,
27 3340.29, and 3340.30 were amended to implement a license restructure from the Advanced
28 Emission Specialist Technician (EA) license and Basic Area (EB) Technician license to Smog
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 proceeding against an automotive repair dealer or to render a decision temporarily or permanently
2 invalidating (suspending or revoking) a registration.

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

6 8. Health & Saf. Code section 44072.6 provides, in pertinent part, that the expiration or
7 suspension of a license by operation of law, or by order or decision of the Director of Consumer
8 Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of
9 jurisdiction to proceed with disciplinary action.

10 9. Health & Saf. Code section 44072.8 states that when a license has been revoked or
11 suspended following a hearing under this article, any additional license issued under this chapter in
12 the name of the licensee may be likewise revoked or suspended by the director.

13 10. California Code of Regulations (“Cal. Code Regs.”), title 16, section 3340.28, states,
14 in pertinent part:

15 ...

16 “(e)[u]pon renewal of an unexpired Basic Area Technician license or an Advanced Emission
17 Specialist Technician license issued prior to the effective date of this regulation, the licensee may
18 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.”

19 ...

20 STATUTORY PROVISIONS

21 **Business and Professions Code**

22 11. Bus. & Prof. Code section 22 provides, in pertinent part, that “Board” as used in any
23 provision of this Code, refers to the board in which the administration of the provision is vested,
24 and unless otherwise provided, shall include “bureau,” “commission,” “committee,” “department,”
25 “division,” “examining committee,” “program,” and “agency.”

26 12. Bus. & Prof. Code section 477 provides, in pertinent part, that a “license” includes
27 “certificate” and “registration”.

28 13. Bus. & Prof. Code section 9884.7 states, in pertinent part:

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

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

9 ...

10 "(4) Any other conduct that constitutes fraud."

11 ...

12 ...

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

17 **Health and Safety Code**

18 14. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

25 ...

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

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

28 ...

1 15. Health & Saf. Code section 44072.10 states, in pertinent part:

2 ...

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

6 (1) Clean piping, as defined by the department.

7 ...

8 “(4) Intentional or willful violation of this chapter or any regulation, standard, or
9 procedure of the department implementing this chapter.”

10 ...

11 **COST RECOVERY**

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

16 **UNDERCOVER VIDEO SURVEILLANCE**

17 17. During a review of Central Valley Smog’s test data from March 1, 2013, to April 22,
18 2013, an investigator with the Bureau observed that certain improper or illegal smog inspections
19 and certifications may have been performed. The Vehicle Information Database (“VID”) showed
20 that the smog inspections/certifications were performed/issued by Respondent. As a result, the
21 Bureau initiated an investigation.

22 18. On April 23, 2013, at approximately 0658 hours, Bureau Investigator E.L.
23 commenced a video surveillance operation of Respondent’s smog check facility. At approximately
24 1258 hours, a Red Mercury Mountaineer SUV (“Mercury Mountaineer”) arrived at the facility.
25 Respondent drove the vehicle into the service bay and exited the vehicle. At approximately 1433
26 hours, the Investigator visited the facility and spoke to Respondent during the visit. The
27 surveillance operation was concluded at approximately 1845 hours. Later, E.L. reviewed the
28 surveillance video and obtained information from the Bureau’s VID. The video and VID data

1 revealed that between 1301 hours and 1306 hours, Respondent performed a smog inspection on a
2 1999 Chevrolet Astro Van 2WD (“Astro Van”), resulting in the issuance of Electronic Smog
3 Certificate of Compliance No. #XT420378C. In fact, Respondent conducted the inspection using
4 the exhaust emissions of the Mercury Mountaineer, a method known as clean piping², resulting in
5 the issuance of a fraudulent smog certificate of compliance for the 1999 Chevrolet.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Untrue or Misleading Statements)**

8 19. Respondent’s Registration is subject to disciplinary action under Bus. & Prof. Code
9 section 9884.7, subdivision (a)(1), in that Respondent made or authorized a statement which he
10 knew or in the exercise of reasonable care should have known to be untrue or misleading, as
11 follows: Respondent certified that the Astro Van had passed inspection and was in compliance
12 with applicable laws and regulations. In fact, Respondent had used clean piping methods in order
13 to issue a certificate for the vehicle and did not test or inspect the vehicle as required by Health &
14 Saf. Code section 44012.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Fraud)**

17 20. Respondent’s Registration is subject to disciplinary action under Bus. & Prof. Code
18 section 9884.7, subdivision (a)(4), in that Respondent committed an act that constitutes fraud by
19 issuing an electronic smog certification of compliance for the Astro Van without ensuring that a
20 bona fide inspection was performed of the emission control devices and systems on the vehicle,
21 thereby depriving the People of the State of California of the protection afforded by the Motor
22 Vehicle Inspection Program.

23 ///

24 **THIRD CAUSE FOR DISCIPLINE**

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

26 ² California Code of Regulations, title 16, section 3340, states, in pertinent part, that
27 “[c]lean piping” for the purposes of Health and Safety Code section 44072.10(c)(1), means the
28 use of a substitute exhaust emissions sample in place of the actual test vehicle’s exhaust in order to
cause the EIS to issue a certificate of compliance for the test vehicle”.

1 devices and systems on the vehicle, thereby depriving the People of the State of California of the
2 protection afforded by the Motor Vehicle Inspection Program.

3 **SIXTH CAUSE FOR DISCIPLINE**

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

5 24. Respondent's Technician License No. EA 634458 is subject to disciplinary action
6 under Health & Saf. Code section 44072.2, subdivision (a), in that Respondent failed to comply
7 with section 44012 of that Code in a material respect, as follows: Respondent failed to perform the
8 emission control tests on the Astro Van in accordance with procedures prescribed by the
9 department.

10 **SEVENTH CAUSE FOR DISCIPLINE**

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

12 25. Respondent's Technician License is subject to disciplinary action pursuant to Health &
13 Saf. Code section 44072.2, subdivision (c), in that Respondent failed to comply with provisions of
14 California Code of Regulations, title 16, as follows:

15 a. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test the 1999
16 Chevrolet in accordance with Health & Saf. Code sections 44012 and 44035, and California Code
17 of Regulations, title 16, section 3340.42.

18 b. **Section 3340.41, subdivision (c):** Respondent entered false information into the EIS
19 by entering vehicle identification information or emission control system identification data for a
20 vehicle other than the one being tested.

21 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on the 1999
22 Chevrolet in accordance with the Bureau's specifications.

23 **EIGHTH CAUSE FOR DISCIPLINE**

24 **(False or Fraudulent issuing or obtaining a certificate of compliance)**

25 26. Respondent's Technician License is subject to disciplinary action pursuant to Health &
26 Saf. Code section 44072.2, subdivision (d), in that Respondent committed a dishonest, fraudulent
27 or deceitful act whereby another is injured by issuing an electronic smog certificate of compliance
28 for the Astro Van without performing a bona fide inspection of the emission control devices and

1 systems on the vehicle, thereby depriving the People of the State of California of the protection
2 afforded by the Motor Vehicle Inspection Program.

3 **OTHER MATTERS**

4 27. Pursuant to Health & Saf. Code section 44072.8, the Director may suspend, revoke,
5 or place on probation the registration for all places of business operated in this state by
6 Respondent Jose Soto Dominguez, upon a finding that said Respondent has, or is, engaged in a
7 course of repeated and willful violations of the laws and regulations pertaining to an automotive
8 repair dealer.

9 28. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Station License
10 Number RC 270556, issued to Jose Soto Dominguez, owner of Central Valley Smog, is revoked
11 or suspended, any additional license issued under this chapter in the name of said licensee may be
12 likewise revoked or suspended by the Director.

13 29. Pursuant to Health & Saf. Code section 44072.8, if Advanced Emission Specialist
14 Technician License, currently designated as EA 634458, but upon renewal will be re-designated as
15 EO 634458 and/or EI 634458, is revoked or suspended, any additional license issued under this
16 chapter in the name of said licensee may be likewise revoked or suspended by the Director.

17 **PRAYER**

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

20 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD
21 270556, issued to Jose Soto Dominguez, Owner of Central Valley Smog;

22 2. Revoking or suspending any other automotive repair dealer registration issued to Jose
23 Soto Dominguez;

24 3. Revoking or suspending Smog Check Station License Number RC 270556, issued to
25 Jose Soto Dominguez, Owner of Central Valley Smog;

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27 \\\

28

1 4. Revoking or suspending Jose Soto Dominguez's Advanced Emission Specialist
2 Technician License, currently designated as License Number EA 634458, but which, upon
3 renewal, will be re-designated as EO 634458 and/or EI 634458;

4 5. Revoking or suspending any additional license issued under Chapter 5 of the Health
5 and Safety Code in the name of Jose Soto Dominguez;

6 6. Ordering Jose Soto Dominguez, individually, and as owner of Central Valley Smog, to
7 pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of
8 this case, pursuant to Business and Professions Code section 125.3;

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

10
11
12 DATED: November 18, 2013 

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

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