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

11 In the Matter of the Accusation Against:

Case No. 79/16-19

12 **DAVID'S SMOG TEST, INCORPORATED;**  
13 **EDMUNDO DAVID ESPINOSA,**  
14 **PRESIDENT/SECRETARY/TREASURER**  
1828 E. 4<sup>th</sup> Street  
15 Los Angeles, CA 90033

**A C C U S A T I O N**

**(Smog Check)**

16 Automotive Repair Dealer Registration No. ARD  
265807  
17 Smog Check Test Only Station License No. TC  
265807

18 **and**

19 **EDMUNDO DAVID ESPINOSA AKA**  
20 **EDMUND DAVID ESPINOSA**  
2357 N. Eastern Ave.  
21 Los Angeles, CA 90032

22 Smog Check Inspector License No. EO 146409  
(formerly Advanced Emission Specialist  
23 Technician License No. EA 146409)

24 Respondents.

25 Complainant alleges:

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1 **PARTIES**

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

4 **David's Smog Test, Incorporated; Edmundo David Espinosa,**  
5 **President/Secretary/Treasurer**

6 2. On or about July 8, 2011, the Bureau issued Automotive Repair Dealer Registration  
7 Number ARD 265807 to David's Smog Test, Incorporated; Edmundo David Espinosa,  
8 President/Secretary/Treasurer (Respondent David's Smog Test). The Automotive Repair Dealer  
9 Registration was in full force and effect at all times relevant to the charges brought herein, and  
10 will expire on July 31, 2016, unless renewed.

11 3. On or about July 20, 2011, the Bureau issued Smog Check-Test Only Station License  
12 Number TC 265807 to Respondent David's Smog Test. The Smog Check Test Only Station  
13 License was in full force and effect at all times relevant to the charges brought herein, and will  
14 expire on July 31, 2016, unless renewed.

15 **Edmundo David Espinosa**

16 4. In or about 2003, the Bureau issued Advanced Emission Specialist Technician  
17 License No. EA 146409 to Edmundo David Espinosa (Respondent Espinosa). The technician  
18 license expired and was cancelled on September 30, 2013. Effective September 30, 2013, the  
19 license was renewed, at Respondent Espinosa's election, as Smog Check Inspector License  
20 Number EO 146409. The Smog Check Inspector license was in full force and effect at all times  
21 relevant to the charges brought herein, and will expire on September 30, 2015, unless renewed.<sup>1</sup>

22 **JURISDICTION**

23 5. Business and Professions Code ("Bus. & Prof. Code") section 9884.7 provides that  
24 the Director may revoke an automotive repair dealer registration.

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26 <sup>1</sup> 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 “program,” and “agency.” “License” includes certificate, registration or other means to engage  
2 in a business or profession regulated by the Bus. & Prof. Code.

3 11. Health & Saf. Code section 44072.2 states, in pertinent part:

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

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

10 . . . .

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

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

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

16 . . . .

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

21 . . . .

22 (4) Intentional or willful violation of this chapter or any regulation,  
23 standard, or procedure of the department implementing this chapter . . .

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

27 **COST RECOVERY**

28 14. Bus. & Prof. Code section 125.3 provides, in pertinent part, that a Board may request  
the administrative law judge to direct a licentiate found to have committed a violation or  
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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**VID DATA REVIEW**

15. The Bureau initiated an investigation against David's Smog Test, Incorporated based on a review of information from the Bureau's Vehicle Information Database (VID), which indicated that Respondents may have engaged in fraudulent smog check activities.

16. As part of the investigation, Bureau representative Robert S. Martin downloaded test data information from the VID for all smog tests conducted by David's Smog Test, Incorporated for the periods of April 1, 2014 through June 30, 2014 and July 1, 2014 through September 22, 2014. The VID data revealed that the diagnostic trouble code P0507 was stored in the memory of the power train control module of eight (8) different vehicles that were certified by Respondent Espinosa on behalf of David's Smog Test, Incorporated during those time periods. After researching the original equipment manufacturer (OEM) service information for these vehicles, and after consulting Mitchell On-Demand and Alldata Information Systems, Bureau representative Robert S. Martin determined that diagnostic trouble code P0507 was not applicable to any of these vehicles and, therefore, that other vehicles had been used in place of these eight (8) vehicles during their respective OBD II functional tests.<sup>2</sup> This fraudulent conduct constitutes clean plugging.<sup>3</sup> The following chart illustrates the documented clean plugging activities of Respondents for the periods of April 1, 2014 through June 30, 2014 and July 1, 2014 through September 22, 2014.

Test Date and Time*	Vehicle Certified & License No.	Certificate No.	Details
04/01/2014 1833-1843 hours	1997 Honda Accord 4CEA393	PG066786	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.

<sup>2</sup> The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the vehicle fails the OBD II functional test, it will fail the overall inspection.

<sup>3</sup> Clean plugging refers to the use of the OBD II readiness monitor status and stored fault code (trouble code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle that is not in compliance due to a failure to complete the minimum number of self tests, known as monitors, or due to the presence of a stored fault code that indicates an emission control system or component failure.

1	04/04/2014 1415-1427 hours	1999 Lincoln Navigator 4DSV378	PG066796	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
2				
3				
4	08/04/2014 1019-1036 hours	2001 Toyota Avalon 4PHA773	PI746343	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
5				
6	08/20/2014 1733-1748 hours	1997 Nissan Sentra 6BQW265	PK030598	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
7				
8				
9	08/20/2014 1754-1811 hours	2006 Toyota Corolla 5POJ517	PK030599	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
10				
11	08/30/2014 1247-1309 hours	1998 Dodge Caravan 6KIB325	PK304643	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
12				
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14	09/12/2014 1623-1639 hours	2001 Nissan Maxima VIN# JN1CA31DX1T632620	PK488089	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
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16	09/12/2014 1644-1654 hours	2002 Toyota Camry 4UNT388	PK488090	Inapplicable fault code P0507 detected; vehicle certified by Respondent Espinosa.
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19 \* Test times are in military time.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Untrue or Misleading Statements)**

22 17. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to  
23 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(1), in that it  
24 made or authorized statements which it knew or in the exercise of reasonable care should have  
25 known to be untrue or misleading, as follows: Respondent David's Smog Test certified that the 8  
26 vehicles identified in paragraph 16 above, had passed inspection and were in compliance with  
27 applicable laws and regulations. In fact, Respondent David's Smog Test conducted the  
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1 inspections on the vehicles using clean-plugging methods in that he substituted or used a different  
2 vehicle(s) during the OBD II functional tests in order to issue smog certificates of compliance for  
3 the vehicles, and did not test or inspect the vehicles as required by Health & Saf. Code section  
4 44012.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Fraud)**

7 18. Respondent David's Smog Test's Automotive Repair Dealer Registration is subject to  
8 disciplinary action pursuant to Bus. & Prof. Code section 9884.7, subdivision (a)(4), in that it  
9 committed acts that constitute fraud by issuing electronic smog certificates of compliance for the  
10 eight vehicles identified in paragraph 16 above, without performing bona fide inspections of the  
11 emission control devices and systems on the vehicles, thereby depriving the People of the State of  
12 California of the protection afforded by the Motor Vehicle Inspection Program.

13 **THIRD CAUSE FOR DISCIPLINE**

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

15 19. Respondent David's Smog Test's Smog Check Test Only Station License is subject to  
16 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (a), in that it  
17 failed to comply with the following sections of that Code:

18 a. **Section 44012:** Respondent David's Smog Test failed to ensure that the emission  
19 control tests were performed on the eight vehicles identified in paragraph 16 above, in accordance  
20 with procedures prescribed by the department.

21 b. **Section 44015:** Respondent David's Smog Test issued electronic smog certificates of  
22 compliance for the eight vehicles identified in paragraph 16 above, without ensuring that the  
23 vehicles were properly tested and inspected to determine if they were in compliance with Health  
24 & Saf. Code section 44012.

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1 **FOURTH CAUSE FOR DISCIPLINE**

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

4 20. Respondent David's Smog Test's Smog Check Test Only Station License is subject to  
5 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (c), in that it  
6 failed to comply with provisions of California Code of Regulations, title 16, as follows:

7 a. **Section 3340.24, subdivision (c):** Respondent David's Smog Test falsely or  
8 fraudulently issued electronic smog certificates of compliance for the eight vehicles identified in  
9 paragraph 16 above.

10 b. **Section 3340.35, subdivision (c):** Respondent David's Smog Test issued electronic  
11 smog certificates of compliance for the eight vehicles identified in paragraph 16 above, even  
12 though the vehicles had not been inspected in accordance with section 3340.42.

13 c. **Section 3340.42:** Respondent David's Smog Test failed to ensure that the required  
14 smog tests were conducted on the eight vehicles identified in paragraph 16 above, in accordance  
15 with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

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

18 21. Respondent David's Smog Test's Smog Check Test Only Station License is subject to  
19 disciplinary action pursuant to Health & Saf. Code section 44072.2, subdivision (d), in that it  
20 committed dishonest, fraudulent, or deceitful acts whereby another was injured by issuing  
21 electronic smog certificates of compliance for the eight vehicles identified in paragraph 16 above,  
22 without performing bona fide inspections of the emission control devices and systems on the  
23 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
24 Motor Vehicle Inspection Program.

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1 without performing bona fide inspections of the emission control devices and systems on the  
2 vehicles, thereby depriving the People of the State of California of the protection afforded by the  
3 Motor Vehicle Inspection Program.

4 **OTHER MATTERS**

5 25. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may  
6 suspend, revoke, or place on probation the registration for all places of business operated in this  
7 state by Respondent David's Smog Test, upon a finding that it has, or is, engaged in a course of  
8 repeated and willful violations of the laws and regulations pertaining to an automotive repair  
9 dealer.

10 26. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Test Only Station  
11 License No. TC 265807, issued to Respondent David's Smog Test, is revoked or suspended, any  
12 additional license issued under this chapter in the name of said licensee may be likewise revoked  
13 or suspended by the director.

14 27. Pursuant to Health & Saf. Code section 44072.8, if Smog Check Inspector License  
15 No. EO 146409, issued to Respondent Espinosa, is revoked or suspended, any additional license  
16 issued under this chapter in the name of said licensee may be likewise revoked or suspended by  
17 the director.

18 **PRAYER**

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

21 1. Revoking or suspending Automotive Repair Dealer Registration No. ARD 265807,  
22 issued to David's Smog Test, Incorporated; Edmundo David Espinosa,  
23 President/Secretary/Treasurer;

24 2. Revoking or suspending any other automotive repair dealer registration issued to  
25 David's Smog Test, Incorporated; Edmundo David Espinosa, President/Secretary/Treasurer;

26 3. Revoking or suspending Smog Check Test Only Station License No.  
27 TC 265807, issued to David's Smog Test, Incorporated; Edmundo David Espinosa,  
28 President/Secretary/Treasurer;

1           5.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
2 and Safety Code in the name of David's Smog Test, Incorporated; Edmundo David Espinosa,  
3 President/Secretary/Treasurer;

4           6.    Revoking or suspending Smog Check Inspector License No. EO 146409, issued to  
5 Edmundo David Espinosa;

6           8.    Revoking or suspending any additional license issued under Chapter 5 of the Health  
7 and Safety Code in the name of Edmundo David Espinosa;

8           9.    Ordering David's Smog Test, Incorporated; Edmundo David Espinosa,  
9 President/Secretary/Treasurer, and Edmundo David Espinosa to pay the Director of Consumer  
10 Affairs the reasonable costs of the investigation and enforcement of this case, pursuant to  
11 Business and Professions Code section 125.3; and

12           10. Taking such other and further action as deemed necessary and proper.

13  
14 DATED: 8/24/15

Patrick Doraais by Jary Balatti  
PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant  
Doug Balatti  
Assist. Chief

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