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

12
13 In the Matter of the Accusation Against:

Case No. 79/22-15207

14 **KLK INTERNATIONAL INC.**
dba BURLINGAME SMOG CHECK
15 **KANSINEE ADSANATHAM, President**
16 **1876 El Camino Real**
Burlingame, CA 94010

ACCUSATION

17 **Mailing Address:**
18 **1234 Church Street**
San Francisco, CA 94114

19 **Automotive Repair Dealer No. ARD 288843**
Smog Check Station License No TC 288843

20 **MANUEL VIEIRA DALUZ**
21 **1252 Highland Blvd.**
22 **Hayward, CA 94542**

23 **Smog Check Inspector (EO) License No. EO 631296**

24 **JOSE MENDOZA**
25 **7920 Anza Dr.**
San Diego, CA 92114

26 **Smog Check Inspector (EO) License No. EO 639368**

27 Respondents.
28

PARTIES

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

2. On or about October 30, 2017, the Bureau issued Automotive Repair Dealer Registration Number ARD 288843 to KLK International Inc., dba Burlingame Smog Check, Kansinee Adsanatham, President (Respondent Burlingame Smog). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed.

3. On or about November 30, 2017, the Bureau issued Smog Check Test Only Station License Number TC 288843 (Smog Station License) to Respondent Burlingame Smog. The Smog Station License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed

4. In 2009, the Bureau issued Advanced Emission Specialist Technician License Number EA 631296 to Manuel Vieira Daluz (Respondent Daluz). The license was canceled on November 5, 2013. The license was thereafter renewed pursuant to Respondent Daluz's election as a Smog Check Inspector, License No. EO 631296, effective November 1, 2013.¹ The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2023, unless renewed.

5. On or about June 16, 2016, the Bureau issued Smog Check Inspector License Number EO 639368 to Jose Mendoza (Respondent Mendoza). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2024, unless renewed.

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

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6. This Accusation is brought before the Director of the Department of Consumer

7. Business and Professions Code (Code) section 118, subdivision (b) states:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

8. Code section 9884.13 provides, in pertinent part, that the expiration of a valid

9. Health and Safety Code section 44002 provides, in pertinent part, that the Director

10. Health and Safety Code section 44072.6 provides, in pertinent part, that the expiration

11. Health and Safety Code section 44072.8 states, “When a license has been revoked or

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12. Code section 9884.7 states:

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

member of the automotive repair dealer.

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

...

(4) Any other conduct which constitutes fraud.

...

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it.

...

(c) Notwithstanding subdivision (b), the director may suspend, revoke, or place on probation 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.

13. Health and Safety Code section 44012 states:

The test at the smog check stations shall be performed in accordance with procedures prescribed by the department, pursuant to Section 44013, shall require, 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:

...

(f) A visual or functional check is made of emission control devices 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.

...

14. Health and Safety Code section 44032 provides, in relevant part, that "[q]ualified technicians shall perform tests of emission control devices and systems in accordance with Section 44012."

15. Health and Safety Code section 44072.2 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 relate 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.

...

16. Health and Safety Code section 44072.10, subdivision (c) states, in pertinent part, that “[t]he department shall revoke the license of any smog check technician or station licensee who fraudulently certifies vehicles or participates in the fraudulent inspection of vehicles . . .”

17. California Code of Regulations, title 16, section 3340.24, subdivision (c) states that “[t]he bureau may suspend or revoke the license of or pursue other legal action against a licensee, if the licensee falsely or fraudulently issues or obtains a certificate of compliance or a certificate of noncompliance.”

18. California Code of Regulations, title 16, section 3340.30, subdivision (a) states:

A smog check technician shall comply with the following requirements at all times while licensed. 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 3340.41, subdivision (c) states:

No person shall enter into the emissions inspection system any vehicle identification information or emission control system identification data for any vehicle other than the one being tested. Nor shall any person knowingly enter into the emissions inspection system any false information about the vehicle being tested.

20. California Code of Regulations, title 16, section 3340.42, subdivision (b) states:

In addition to subsection (a), all vehicles subject to the smog check program shall receive the following:

(1) A visual inspection of emission control components and systems to verify the vehicle's emission control systems are properly installed.

(2) A functional inspection of emission control systems as specified in the Smog Check Manual, referenced by section 3340.45, which may include an OBD test, to verify their proper operation.

21. California Code of Regulations, title 16, section 3340.45, states:

(a) All Smog Check inspections shall be performed in accordance with

requirements and procedures prescribed in the following:

(1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby incorporated by reference. This manual shall be in effect until subparagraph (2) is implemented.

(2) Smog Check Manual, dated 2013, which is hereby incorporated by reference. This manual shall become effective on or after January 1, 2013.

22. California Code of Regulations, title 16, section 3373 states:

No automotive repair dealer or individual in charge shall, in filling out an estimate, invoice, or work order, or record required to be maintained by section 3340.15(e) of this chapter, withhold therefrom or insert therein any statement or information which will cause any such document to be false or misleading, or where the tendency or effect thereby would be to mislead or deceive customers, prospective customers, or the public.

COSTS

23. Code section 125.3 provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL SUMMARY

24. California's Smog Check Program requires the owners of most motor vehicles in California to take and pass a smog check inspection and receive a Certificate of Compliance every two years, when renewing their registration or when the vehicle's title is transferred. These inspections are performed by Smog Check Inspectors at Smog Check Stations, both of which are licensed by the Bureau.

25. On March 9, 2015, the Bureau implemented a statewide regulatory change requiring use of the On Board Diagnostic Inspection System (BAR-OIS) for the smog testing of model year 2000 and newer gasoline and hybrid vehicles and model year 1998 and newer diesel vehicles.

26. The BAR-OIS smog inspection uses the following equipment: a Data Acquisition Device (DAD), a computer with BAR-OIS software installed, a bar code scanner, and a printer. The DAD is a scan tool that retrieves data from a vehicle's On Board Diagnostic-generation II

(OBD-II) computer. The DAD connects the BAR-OIS computer to the vehicle's diagnostic link connector (DLC) to retrieve the data from the vehicle. The bar code scanner is used to input inspector information, the vehicle identification number (VIN), and DMV renewal information. The printer is used to print Vehicle Inspection Reports.

27. Data retrieved and recorded during a BAR-OIS smog check includes: the eVIN, which is the digitally stored Vehicle Identification Number programmed into the vehicle's Powertrain Control Module (PCM); the communication protocol, which is the manufacturer/vehicle's specific "language" the PCM uses to relay information; and the number of Parameter Identifications (PIDs), which is the number of specific data values each PCM uses related to emissions controls. Both the communication protocol and number of PIDs are programmed into a vehicle's on-board computer during manufacture, and do not change.

28. The BAR-OIS smog inspection also requires the Smog Check Inspector to perform a visual and functional test on the vehicle. The visual inspection of the emission control components verifies that the required emission control devices are present and properly connected, and a functional test is performed of the malfunction indicator light (MIL).

29. After a vehicle's OBD-II data and results from the visual inspection and functional test have been input into the computer, the BAR-OIS software determines whether or not the vehicle passes the inspection. If the vehicle passes the inspection, a certificate of compliance is issued. Regardless of whether the vehicle passes inspection, the information from the smog inspection, including the name of the Smog Check Station and the identity of the Smog Check Inspector, is transmitted to the Bureau's Vehicle Information Database (VID).

30. The Bureau can access the VID to view test data on smog check inspections performed at any Smog Check Station, or search for, retrieve, and print a test record for a particular vehicle which has been tested.

31. "Clean-plugging" is the common term used to describe the practice of using one vehicle's properly functioning OBD-II system, or another source, to generate passing data readings or diagnostic information for the purpose of fraudulently issuing a smog certificate of compliance to a vehicle that is not in smog compliance and/or is not present for testing.

32. An investigation conducted by the Bureau determined that between February 23, 2021 and September 9, 2022, Respondent Burlingame Smog fraudulently issued five certificates of compliance using clean-plugging methods. All of the fraudulent smog inspections were performed at Burlingame Smog Check's premises. One of the five fraudulent inspections was performed by Respondent Mendoza; the remaining four were performed by Respondent Daluz.

33. Data reviewed by a Bureau representative indicated that the five vehicles purportedly tested by Respondents Mendoza and Daluz at Burlingame Smog Check were not and could not have been connected to the DAD when they were being certified, because the OBD-II data purportedly transmitted by those vehicles could not have been transmitted by those vehicles.

34. Respondent Burlingame Smog issued fraudulent certificates of compliance to the following five vehicles:

a) Clean Plug #1: 2004 Volvo XC90 (performed by Respondent Mendoza)

Certificate # RW980475C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (2/23/21)	YV4940DL1D2428893	ICAN11bt5	41 16
Expected OBD-II Value	Not Expected	I914	18 7

The expected communication protocol for a car of this make and model year is I914, and the expected PID count is 18|7. When this car was inspected at a different Smog Check Station on March 28, 2022, it did not transmit the eVIN, and transmitted the expected communication protocol and PID count. However, when inspected by Respondent Mendoza on February 23, 2021, a different eVIN, protocol, and PID count was transmitted.

In addition, OIS test data indicates that the vehicle used to generate the fraudulent certificate of compliance (a 2013 Volvo XC60 3.2, VIN YV4940DL1D2428893) was certified by another licensed smog check inspector at Burlingame Smog Check on March 25, 2021. The OIS test data transmitted for the 2013 Volvo XC60 3.2 matches the OIS test data for the fraudulent inspection of the 2004 Volvo XC90.

These discrepancies indicate that the DAD was not connected to the 2004 Volvo XC90 during inspection, causing the issuance of a fraudulent certificate of compliance.

b) Clean Plug #2: 2013 Acura TL (performed by Respondent Daluz)

Certificate # IN154523C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (9/27/21)	19XFB2F50DE227141	ICAN29bt5	40
Expected OBD-II Value	19UUA8F24DA013678	ICAN29bt5	44

The expected communication protocol for a car of this make and model year is ICAN29bt5, and the expected PID count is 44. When this car was inspected at a different Smog Check Station on April 1, 2022, it transmitted the expected eVIN, communication protocol and PID count. However, when inspected by Respondent Daluz on September 27, 2021, an incorrect eVIN and different PID count was transmitted.

In addition, OIS test data indicates that the vehicle used to generate the fraudulent certificate of compliance (a 2013 Honda Civic LX, VIN 19XFB2F50DE227141) was certified by Respondent Daluz at Burlingame Smog Check on September 27, 2021, the same day as the fraudulent smog check inspection of the 2013 Acura TL. The OIS test data transmitted for the 2013 Honda Civic LX matches the OIS test data for the fraudulent inspection of the 2013 Acura TL.

These discrepancies indicate that the DAD was not connected to the 2013 Acura TL during inspection, causing the issuance of a fraudulent certificate of compliance.

c) Clean Plug #3: 2017 Subaru Crosstrek Limited (performed by Respondent Daluz)

Certificate # SS567592C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (6/20/22)	WAUKGAFL9DA114457	ICAN11bt5	49 10
Expected OBD-II Value	JF2GPANC2H8269246	ICAN11bt5	48 3 or 49 10

The expected communication protocol for a car of this make and model year is ICAN11bt5, and the expected PID count is 48|3 or 49|10. However, when inspected by Respondent Daluz on June 20, 2022, an incorrect eVIN and different PID count was transmitted.

In addition, OIS test data indicates that the vehicle used to generate the fraudulent certificate of compliance (a 2013 Audi S4 Prestige, VIN WAUKGAFL9DA114457) was certified by Respondent Daluz at Burlingame Smog Check on June 20, 2022, the same day as the fraudulent smog check inspection of the 2017 Subaru Crosstrek Limited. The OIS test data transmitted for the 2013 Audi S4 Prestige matches the OIS test data for the fraudulent inspection of the 2017 Subaru Crosstrek Limited.

These discrepancies indicate that the DAD was not connected to the 2017 Subaru Crosstrek Limited during inspection, causing the issuance of a fraudulent certificate of compliance.

d) Clean Plug #4: 2008 Honda Civic GX (performed by Respondent Daluz)

Certificate # IR207397C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (6/30/22)	4T1BD1FKXCU039036	ICAN11bt5	39 26
Expected OBD-II Value	1HGFA46508L000951	ICAN29bt5	35 19

The expected communication protocol for a car of this make and model year is ICAN29bt5, and the expected PID count is 35|19. When this car was inspected at a different Smog Check Station on December 5, 2020, it transmitted the expected eVIN, communication protocol and PID count. However, when inspected by Respondent Daluz on June 30, 2022, a different eVIN, protocol, and PID count was transmitted.

In addition, OIS test data indicates that the vehicle used to generate the fraudulent certificate of compliance (a 2012 Toyota Camry Hybrid, VIN 4T1BD1FKXCU039036) was certified by Respondent Daluz at Burlingame Smog Check on June 30, 2022, the same day as the fraudulent smog check inspection of the 2008 Honda Civic GX. The OIS test data transmitted for the 2012 Toyota Camry Hybrid matches the OIS test data for the fraudulent inspection of the 2008 Honda Civic GX.

These discrepancies indicate that the DAD was not connected to the 2008 Honda Civic GX during inspection, causing the issuance of a fraudulent certificate of compliance.

e) Clean Plug #5: 2004 Mercedes-Benz CLK 320C (performed by Respondent Daluz)

Certificate # SW401036C	eVIN	Protocol	PID Count
Fraudulent Passing Inspection (9/2/22)	2T2HK31U39C103668	ICAN11bt5	46
Expected OBD-II Value	WDBTJ65J94F078907	KWPF	24

The expected communication protocol for a car of this make and model year is KWPF, and the expected PID count is 24. When this car was inspected by another licensed smog check inspector at Burlingame Smog Check on September 5, 2020, it transmitted the expected eVIN, communication protocol and PID count. However, when inspected by Respondent Daluz on September 2, 2022, an incorrect eVIN and different protocol and PID count was transmitted.

In addition, OIS test data indicates that the vehicle used to generate the fraudulent certificate of compliance (a 2009 Lexus RX 350, VIN 2T2HK31U39C103668) was certified by a different licensed smog check inspector at Burlingame Smog Check on March 22, 2021. The OIS test data transmitted for the 2009 Lexus RX 350 matches the OIS test data for the fraudulent inspection of the 2004 Mercedes-Benz CLK 320C.

These discrepancies indicate that the DAD was not connected to the 2004 Mercedes-Benz CLK 320C during inspection, causing the issuance of a fraudulent certificate of compliance.

FIRST CAUSE FOR DISCIPLINE

(Automotive Repair Registration: Misleading Statements)

6. Respondent Burlingame Smog has subjected its Automotive Repair Registration to discipline under Code section 9884.7, subdivision (a)(1), in that Respondent Burlingame Smog made statements that it knew or which by exercise of reasonable care should have known were untrue or misleading, as set forth above in paragraphs 31-34, above. Specifically, Respondent Burlingame Smog fraudulently purported to test five vehicles and then certified that the vehicles

1 passed inspection and were in compliance with applicable laws and regulations, when in fact
2 Burlingame Smog conducted the inspections on those vehicles using clean-plugging methods.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Automotive Repair Registration: Fraud)**

5 7. Respondent Burlingame Smog has subjected its Automotive Repair Registration to
6 discipline under Code section 9884.7, subdivision (a)(4), in that Respondent Burlingame Smog
7 committed acts which constitute fraud, as set forth above in paragraphs 31-34, above.

8 **THIRD CAUSE FOR DISCIPLINE**

9 **(Automotive Repair Registration: Failure to Comply With Automotive Repair Act)**

10 8. Respondent Burlingame Smog has subjected its Automotive Repair Registration to
11 discipline under Code section 9884.7, subdivision (a)(6), in that Respondent Burlingame Smog
12 failed in a material aspect to comply with provisions of the Automotive Repair Act (Code section
13 9880 et seq.) and related regulations, as set forth in paragraphs 31-34, above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Smog Check Station License: Violations of the Motor Vehicle Inspection Program)**

16 9. Respondent Burlingame Smog has subjected its Smog Check Station License to
17 discipline under Health and Safety Code section 44072.2, subdivisions (a) and (c), in that
18 Respondent Burlingame Smog violated sections of that Code and applicable regulations, as set
19 forth above in paragraphs 31-34. Specifically, Respondent Burlingame Smog violated the
20 following:

21 a. Health & Safety Code, § 44012: Respondent Burlingame Smog failed to ensure that
22 the smog inspections of five vehicles were performed in accordance with procedures prescribed
23 by the department.

24 b. Health & Safety Code, § 44012, subd. (f) and Cal. Code Regs., tit. 16, § 3340.42,
25 subd. (b): On five occasions, Respondent Burlingame Smog failed to perform a visual and/or
26 functional check of required emission control devices.

1 c. Health & Safety Code, § 44059: Respondent Burlingame Smog willfully made false
2 entries for electronic certificates of compliance by certifying that five vehicles had been inspected
3 as required when, in fact, they had not.

4 d. Health & Safety Code, § 44072.2, subd. (d): Respondent Burlingame Smog
5 committed acts involving dishonesty, fraud or deceit whereby another was injured, in that
6 Respondent Burlingame Smog issued electronic certificates of compliance for vehicles without
7 performing bona fide inspections of the emission control devices and systems on the vehicles,
8 thereby depriving the People of the State of California of the protection afforded by the Motor
9 Vehicle Inspection Program.

10 e. Health & Safety Code, § 44072.10, subd. (c): Respondent Burlingame Smog
11 participated in the fraudulent inspection and certification of five vehicles through the use of
12 clean-plugging methods.

13 f. Cal. Code Regs., tit. 16, § 3340.24, subd. (c): Respondent Burlingame Smog falsely
14 or fraudulently issued electronic certificates of compliance for five vehicles without performing
15 bona fide inspections of the vehicles' emission control devices and systems.

16 g. Cal. Code Regs., tit. 16, § 3340.41, subd. (c): On five occasions, Respondent
17 Burlingame Smog entered vehicle identification information for a vehicle other than the one
18 being tested into the emissions inspection system. Respondent Burlingame Smog further
19 knowingly entered false information about the vehicle being tested into the emissions inspection
20 system.

21 h. Cal. Code Regs., tit. 16, § 3340.45, subd. (a): On five occasions, Respondent failed
22 to conduct the required smog tests and inspections on those vehicles in accordance with the
23 Bureau's specifications, as set out in the Smog Check Manual.

24 i. Cal. Code Regs., tit. 16, § 3373: Respondent Burlingame Smog created a false record
25 when it issued five fraudulent certificates of compliance.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Smog Check Inspector License: Violations of the Motor Vehicle Inspection Program)**

3 10. Respondent Daluz has subjected his Smog Check Inspector license to discipline under
4 Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
5 violated sections of that Code and applicable regulations, as set forth above in paragraphs 31-34,
6 as follows:

7 a. Health & Safety Code, § 44012: Respondent Daluz's inspection of the four vehicles
8 described in paragraph 34, subsections (b)-(e) did not comply with the procedures prescribed by
9 the department.

10 b. Health & Safety Code, § 44012, subd. (f) and Cal. Code Regs., tit. 16, § 3340.42,
11 subd. (b): On four occasions, Respondent Daluz failed to perform a visual and/or functional
12 check of required emission control devices.

13 c. Health & Safety Code, § 44059: Respondent Daluz willfully made false entries for
14 electronic certificates of compliance by certifying that four vehicles had been inspected as
15 required when, in fact, they had not.

16 d. Health & Safety Code, § 44072.2, subd. (d): Respondent Daluz committed acts
17 involving dishonesty, fraud or deceit whereby another was injured, in that Respondent Daluz
18 certified that four vehicles passed inspection and were in compliance with applicable laws and
19 regulations without performing bona fide inspections of the vehicles' emission control devices
20 and systems, thereby depriving the People of the State of California of the protection afforded by
21 the Motor Vehicle Inspection Program.

22 e. Health & Safety Code, § 44072.10, subd. (c): Respondent Daluz participated in the
23 fraudulent inspection and certification of four vehicles through the use of clean-plugging
24 methods.

25 f. Cal. Code Regs., tit. 16, § 3340.30, subd. (a): Respondent Daluz's inspection of the
26 four vehicles described in paragraph 34, subdivisions (b)-(e) did not comply with the procedures
27 prescribed by Health and Safety Code sections 44012 and 44035 and California Code of
28 Regulations, title 16, section 3340.42.

1 g. Cal. Code Regs., tit. 16, § 3340.41, subd. (c): On four occasions, Respondent Daluz
2 entered vehicle identification information for a vehicle other than the one being tested into the
3 emissions inspection system. Respondent Daluz further knowingly entered false information
4 about the vehicle being tested into the emissions inspection system.

5 h. Cal. Code Regs., tit. 16, § 3340.45, subd. (a): On four occasions, Respondent Daluz
6 failed to conduct required smog tests and inspections in accordance with the Bureau's
7 specifications, as set out in the Smog Check Manual.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Smog Check Inspector License: Violations of the Motor Vehicle Inspection Program)**

10 11. Respondent Mendoza has subjected his Smog Check Inspector license to discipline
11 under Health and Safety Code sections 44072.10 and 44072.2, subdivisions (a) and (c), in that he
12 violated sections of that Code and applicable regulations, as set forth above in paragraphs 31-34,
13 as follows:

14 a. Health & Safety Code, § 44012: Respondent Mendoza's inspection of the vehicle
15 described in paragraph 34, subsection (a) did not comply with the procedures prescribed by the
16 department.

17 b. Health & Safety Code, § 44012, subd. (f) and Cal. Code Regs., tit. 16, § 3340.42,
18 subd. (b): Respondent Mendoza failed to perform a visual and/or functional check of required
19 emission control devices.

20 c. Health & Safety Code, § 44059: Respondent Mendoza willfully made a false entry
21 for an electronic certificate of compliance by certifying that a vehicle had been inspected as
22 required when, in fact, it had not.

23 d. Health & Safety Code, § 44072.2, subd. (d): Respondent Mendoza committed an act
24 involving dishonesty, fraud or deceit whereby another was injured, in that Respondent Mendoza
25 certified that a vehicle passed inspection and was in compliance with applicable laws and
26 regulations without a performing bona fide inspection of the vehicle's emission control devices
27 and systems, thereby depriving the People of the State of California of the protection afforded by
28 the Motor Vehicle Inspection Program.

1 e. Health & Safety Code, § 44072.10, subd. (c): Respondent Mendoza participated in
2 the fraudulent inspection and certification of a vehicle through the use of clean-plugging methods.

3 f. Cal. Code Regs., tit. 16, § 3340.30, subd. (a): Respondent Mendoza's inspection of
4 the vehicle described in paragraph 34, subdivision (a) did not comply with the procedures
5 prescribed by Health and Safety Code sections 44012 and 44035 and California Code of
6 Regulations, title 16, section 3340.42.

7 g. Cal. Code Regs., tit. 16, § 3340.41, subd. (c): Respondent Mendoza entered vehicle
8 identification information for a vehicle other than the one being tested into the emissions
9 inspection system. Respondent Mendoza further knowingly entered false information about the
10 vehicle being tested into the emissions inspection system.

11 h. Cal. Code Regs., tit. 16, § 3340.45, subd. (a): Respondent Mendoza failed to conduct
12 a required smog test and inspection in accordance with the Bureau's specifications, as set out in
13 the Smog Check Manual.

14 **OTHER MATTERS**

15 12. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
16 or place on probation the registration for all places of business operated in this state by
17 Respondent Burlingame Smog, upon a finding that Respondent Burlingame Smog has, or is,
18 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
19 automotive repair dealer.

20 13. Pursuant to Health & Safety Code section 44072.8, if Respondent Burlingame
21 Smog's Smog Check Station License is revoked or suspended, any additional license issued under
22 Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may
23 be likewise revoked or suspended by the director.

24 14. Pursuant to Health & Safety Code section 44072.8, if Respondent Daluz's Smog
25 Check Inspector License is revoked or suspended, any additional license issued under Chapter 5
26 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be
27 likewise revoked or suspended by the director.
28

15. Pursuant to Health & Safety Code section 44072.8, if Respondent Mendoza's Smog Check Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise revoked or suspended by the director.

DISCIPLINE CONSIDERATIONS

16. To determine the degree of discipline, if any, to be imposed on Respondent Mendoza, Complainant alleges that on or about January 25, 2017, the Bureau issued to Respondent Mendoza Citation No. M2017-263 with an Order of Abatement for violating Health and Safety Code section 44032 (issuing a Certificate of Compliance to a vehicle using the incorrect inspection system). That Citation is now final and is incorporated by reference as if fully set forth.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 288843 to KKK International Inc., dba Burlingame Smog Check, Kansinee Adsanatham, President;

2. Revoking or suspending Smog Check Test Only Station License Number TC 288843, issued to KKK International Inc., dba Burlingame Smog Check, Kansinee Adsanatham, President;

3. Revoking or suspending any other Automotive Repair Dealer Registration issued to KLK International Inc., Kansinee Adsanatham, President;

4. Revoking or suspending any additional license or registration issued under Chapter 5 of Part 5, Division 26 of the Health and Safety Code to KKK International Inc., Kansinee Adsanatham, President;

5. Revoking or suspending Smog Check Inspector License Number EO 631296, issued to Manuel Vieira Daluz;

6. Revoking or suspending any additional license or registration issued under Chapter 5 of Part 5, Division 26 of the Health and Safety Code to Manuel Vieira Daluz;

1 7. Revoking or suspending Smog Check Inspector License Number EO 639368, issued
2 to Jose Mendoza;

3 8. Revoking or suspending any additional license or registration issued under Chapter 5
4 of Part 5, Division 26 of the Health and Safety Code to Jose Mendoza;

5 9. Ordering KKK International Inc., dba Burlingame Smog Check, Kansinee
6 Adsanatham, President; Manuel Vieira Daluz, and Jose Mendoza to pay the Bureau of
7 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
8 pursuant to Business and Professions Code section 125.3; and,

9 10. Taking such other and further action as deemed necessary and proper.
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12 DATED: As of Digital Signature Date

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

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