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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. 79/16-85

12 **ORTEGA SMOG CHECK,**
Lily Ortega, Owner
13 7502 Compton Ave.
14 Los Angeles, CA 90001

ACCUSATION
(SMOG CHECK)

15 Mailing Address: 5347 Karling Pl.
Palmdale, CA 93552

16 **Automotive Repair Dealer Registration No.**
ARD 274250
17 **Smog Check Station License No. TC 274250,**

18 and

19 **CHRISTIAN GODINEZ**
10514 S. Hoover St.
20 Los Angeles, CA 90044
21 **Smog Check Inspector License No. EO 635907,**

Respondents.

22
23 Complainant alleges:

24 **PARTIES**

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

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1 apply to renew as a Smog Check Inspector, Smog Check Repair Technician, or both.

2 **STATUTORY PROVISIONS**

3 9. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
4 part:

5 "(a) The director, where the automotive repair dealer cannot show there was a bona
6 fide error, may refuse to validate, or may invalidate temporarily or permanently, the
7 registration of an automotive repair dealer for any of the following acts or omissions related
8 to the conduct of the business of the automotive repair dealer, which are done by the
9 automotive repair dealer or any automotive technician, employee, partner, officer, or
10 member of the automotive repair dealer.

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

14 "(4) Any other conduct which constitutes fraud.

15 "(6) Failure in any material respect to comply with the provisions of this chapter [the
16 Automotive Repair Act (Bus. & Prof. Code, § 9880, et seq.)] or regulations adopted
17 pursuant to it.

18 "(b) Except as provided for in subdivision (c), if an automotive repair dealer operates
19 more than one place of business in this state, the director pursuant to subdivision (a) shall
20 only refuse to validate, or shall only invalidate temporarily or permanently the registration
21 of the specific place of business which has violated any of the provisions of this chapter.
22 This violation, or action by the director, shall not affect in any manner the right of the
23 automotive repair dealer to operate his or her other places of business.

24 "(c) Notwithstanding subdivision (b), the director may refuse to validate, or may
25 invalidate temporarily or permanently, the registration for all places of business operated in
26 this state by an automotive repair dealer upon a finding that the automotive repair dealer
27 has, or is, engaged in a course of repeated and willful violations of this chapter, or
28 regulations adopted pursuant to it."

9. Section 17200 of the Code states:

"As used in this chapter, unfair competition shall mean and include any unlawful,
unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading
advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part
3 of Division 7 of the Business and Professions Code."

11. Section 17500 of the Code states, in pertinent part:

It is unlawful for any person, firm, corporation, . . . or any employee thereof with
intent. . . to dispose of. . . property or to perform services, professional or otherwise, . . . to
make or disseminate or cause to be made or disseminated before the public in this state, or

1 to make or disseminate. . . before the public. . . any statement, concerning that. . . property
2 or those services, professional or otherwise, . . . which is untrue or misleading, and which is
3 known, or which by the exercise of reasonable care should be known, to be untrue or
4 misleading. . .”

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

9 13. Section 118(b) of the Code states:

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

18 14. Section 44012 of the Health and Safety Code states, in pertinent part:

19 “The test at the smog check station shall be performed in accordance with procedures
20 prescribed by the department.

21 “(f) A visual or functional check is made of emission control devices specified by the
22 department. “

23 15. Section 44015 of the Health and Safety Code states, in pertinent part:

24 “(b) If a vehicle meets the requirements of Section 44012, a smog check station
25 licensed to issue certificates shall issue a certificate of compliance or a certificate of
26 noncompliance.”

27 16. Section 44032 of the Health and Safety Code states:

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

17. Section 44072.2 of the Health and Safety Code states, in pertinent part:

1 identification information or emission control system identification data for any
2 vehicle other than the one being tested. Nor shall any person knowingly enter into the
3 emissions inspection system any false information about the vehicle being tested.

4 24. Section 3340.42 of the California Code of Regulations, states, in pertinent part
5 that licensed smog check stations and technicians shall conduct tests and inspections in
6 accordance with smog check emissions test methods and standards.

7 **COST RECOVERY**

8 25. Code section 125.3 provides, in pertinent part, that a Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **FACTUAL BACKGROUND**

13 26. During a routine smog check data review, a Bureau representative found abnormal
14 oxygen readings on all of the inspections conducted at Respondent Ortega Smog. On October 7,
15 2014, the Bureau performed an audit at Ortega Smog and found a defective oxygen sensor in the
16 EIS (the station's Emission Inspection System computer), the exhaust sample hose was installed
17 backward, and a gas cap adaptor was missing. As a result of the observed deficiencies, the Bureau
18 subsequently conducted undercover surveillance operations at Ortega Smog on December 4 and
19 11, 2014.

20 **UNDERCOVER OPERATION OF DECEMBER 4, 2014**

21 27. On December 4, 2014, Bureau representatives conducted an undercover video
22 surveillance of Respondent Ortega Smog. During the surveillance they accessed the state's
23 vehicle information database ("VID") and later printed out a Test Summary Report for the
24 vehicles tested that day. After each smog inspection they compared the actual vehicle tested with
25 the test details entered into the VID to determine whether the inspections were legitimate. The
26 VID data summary indicated Respondent Godinez performed all of the inspections and the
27 representatives personally recognized Godinez from a driver's license photo they had previously
28 obtained.

28 28. Vehicles of model year 1995 and older require performance of a Low Pressure Fuel

1 Evaporative Test ("LPFET") as a component of an official smog check inspection. The LPFET
2 requires a smog technician to install an adaptor and hose to the vehicle's fuel fill pipe and "pinch
3 off" or close the vapor line in the engine compartment. The vehicle's fuel system is then
4 pressurized with nitrogen gas. If a leak exceeding the prescribed test limit is detected, the vehicle
5 fails the LPFET, and the overall test result for the smog inspection should also be a fail.

6 29. During the December 4, 2014 surveillance, at least four vehicles which required an
7 LPFET passed smog inspections conducted by Respondents Godinez and Ortega Smog, even
8 though Bureau representatives observed that none of these vehicles received an LPFET. The
9 representatives did not see the gas cap door open on any of these vehicles, nor did they see any
10 hoses connected to the gas cap areas of the vehicles. However, for each of these vehicles
11 Respondent Godinez manually entered "pass" into the vehicle information database for the
12 LPFET and subsequently issued electronic smog certificates of compliance, even though none of
13 the vehicles would have passed a valid smog inspection.

14 **UNDERCOVER OPERATION OF DECEMBER 11, 2014**

15 30. On December 11, 2014, Bureau representatives conducted a second undercover video
16 surveillance at Respondent Ortega Smog. During the surveillance they again accessed the state's
17 vehicle information database ("VID") and later printed out a Test Summary Report for the
18 vehicles tested that day. After each smog inspection they again compared the actual vehicle
19 tested with the test details entered into the VID to determine whether the inspections were
20 legitimate. The VID data summary again indicated Respondent Godinez performed all of the
21 inspections that day.

22 31. Between 1530 hours and 1537 hours on December 11, 2014, Respondents Godinez
23 and Ortega Smog conducted a smog inspection of a 1993 Cadillac. During the inspection, Bureau
24 representatives observed that the gas cap door remained closed and no hose was ever connected to
25 the gas cap area, making it impossible to perform an LPFET. Nevertheless, Respondent Godinez
26 manually entered "pass" into the vehicle information database for the LPFET and subsequently
27 issued an electronic smog certificates of compliance for the Cadillac, even though it would not
28 have passed a valid smog inspection.

1 32. The following chart illustrates the fraudulent smog check inspections observed on
 2 December 4 and 11, 2014, at Respondent Ortega Smog:

No.	Date & Alleged LPFET Test Time	Vehicle Certified	Certificate of Compliance Issued	Details
1	12/4/14 1131-1133 hrs.	1993 Honda Civic License No. 5WFF509	YL955570C	LPFET not performed
2	12/4/14 1235-1236 hrs.	1988 Honda Civic VIN # JHMED3656JS009420	YL955575C	LPFET not performed
3	12/4/14 1453-1455 hrs.	1994 Honda Accord License No. 6YUA240	YL955581C	LPFET not performed
4	12/4/14 1606-1608 hrs.	1994 Dodge B150 Van License No. 8T99186	YL955587C	LPFET not performed
5	12/11/14 1529-1531 hrs.	1993 Cadillac Fleetwood License No. 6GWG956	YN047377C	LPFET not performed

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Untrue or Misleading Statements)**

17 33. Respondent Ortega Smog's registration is subject to disciplinary action pursuant to Code
 18 section 9884.7, subdivision (a)(1), in that on or about December 4 and 11, 2014, it made or authorized
 19 statements which it knew, or in the exercise of reasonable care should have known, to be untrue or
 20 misleading as follows: Respondent Ortega Smog certified that at least five "1995 model year or older"
 21 vehicles had passed inspection and were in compliance with applicable laws and regulations when in
 22 fact, Respondent Ortega Smog conducted the inspections on the vehicle without performing all
 23 portions of a smog check inspection including the LPFET, as required by Health and Safety Code
 24 section 44012. Complainant refers to, and by this reference incorporates, the allegations set forth
 25 above in paragraphs 26 through 32 above, as though set forth fully herein.

26 **SECOND CAUSE FOR DISCIPLINE**

27 **(Fraud)**

28 34. Respondent Ortega Smog's registration is subject to disciplinary action pursuant to

1 Code section 9884.7, subdivision (a)(4), in that on or about December 4 and 11, 2014, it
2 committed acts that constitute fraud by issuing electronic smog Certificates of Compliance for at
3 least five "1995 model year or older" vehicles without performing bona fide inspections of the
4 emission control devices and systems on the vehicles, thereby depriving the People of the State of
5 California of the protection afforded by the Motor Vehicle Inspection Program. Complainant
6 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 26
7 through 32 above, as though set forth fully herein.

8 **THIRD CAUSE FOR DISCIPLINE**

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

10 35. Respondent Ortega Smog's registration is subject to disciplinary action pursuant to
11 Code section 9884.7, subdivision (a)(6), in that on or about December 4 and 11, 2014, it failed in
12 a "material respect to comply with the provisions of this chapter or regulations adopted pursuant
13 to it" when it issued electronic certificates of compliance for certain vehicles without performing
14 bona fide inspections of the emission control devices and systems on those vehicles, thereby
15 depriving the People of the State of California of the protection afforded by the Motor Vehicle
16 Inspection Program. Complainant refers to, and by this reference incorporates, the allegations set
17 forth above in paragraphs 26 through 32 above, as though set forth fully herein.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(False or Misleading Statements)**

20 36. Respondent Ortega Smog's registration is subject to disciplinary action pursuant to
21 Code section 17500, in that on or about December 4 and 11, 2014, it disseminated untrue or
22 misleading information into the state's database that the LPFET portions of smog inspections had
23 been performed on at least five "1995 model year or older" vehicles when, in fact, they had not,
24 and by issuing electronic smog certificates of compliance to those same vehicles which would not
25 have passed a valid smog inspection. Complainant refers to, and by this reference incorporates,
26 the allegations set forth above in paragraphs 26 through 32 above, as though set forth fully herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 37. Respondent Ortega Smog has subjected its station license to discipline under
4 Health & Saf. Code section 44072.2, subdivision (a), in that on or about December 4 and 11,
5 2014, it violated the following sections of the Health & Saf. Code with respect to the inspection
6 of certain vehicles:

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

9 b. **Section 44015, subdivision (b):** Respondent issued electronic certificates of
10 compliance without properly testing and inspecting the vehicles to determine if they were in
11 compliance with section 44012 of the Health & Saf. Code.

12 c. **Section 44032:** Respondent failed to perform tests of the emission control devices
13 and systems on those vehicles in accordance with section 44012 of the Health & Saf. Code.

14 Complainant refers to, and by this reference incorporates, the allegations set forth above in
15 paragraphs 26 through 32 above, as though set forth fully herein.

16 **SIXTH CAUSE FOR DISCIPLINE**

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

18 38. Respondent Ortega Smog has subjected its station license to disciplinary action
19 pursuant to Health & Safety Code section 44072.2, subdivision (c), in that on or about December
20 4 and 11, 2014, it failed to comply with provisions of California Code of Regulations, title 16, as
21 follows:

22 a. **Section 3340.24, subdivision (c):** Respondent falsely or fraudulently issued
23 electronic smog Certificates of Compliance without performing bona fide inspections on the
24 emission control devices and systems on those vehicles as required by Health & Saf. Code section
25 44012.

26 b. **Section 3340.30, subdivision (a):** Respondent failed to inspect and test vehicles in
27 accordance with Health & Saf. Code sections 44012 and 44035, and California Code of
28 Regulations, title 16, section 3340.42.

1 c. **Section 3340.35, subdivision (c):** Respondent issued electronic smog Certificates
2 of Compliance for vehicles even though the vehicles had not been inspected in accordance with
3 section 3340.42.

4 d. **Section 3340.42:** Respondent failed to ensure that the required smog tests were
5 conducted on vehicles in accordance with Bureau specifications.

6 Complainant refers to, and by this reference incorporates, the allegations set forth above in
7 paragraphs 26 through 32 above, as though set forth fully herein.

8 **SEVENTH CAUSE FOR DISCIPLINE**

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

10 39. Respondent Ortega Smog has subjected its station license to disciplinary action
11 pursuant to Health & Safety Code section 44072.2, subdivision (d), in that on or about December
12 4 and 11, 2014, it committed dishonest, fraudulent, or deceitful acts whereby another is injured by
13 issuing electronic smog Certificates of Compliance for vehicles without performing bona fide
14 inspections of the emission control devices and systems on the vehicles, thereby depriving the
15 People of the State of California of the protection afforded by the Motor Vehicle Inspection
16 Program.

17 Complainant refers to, and by this reference incorporates, the allegations set forth above in
18 paragraphs 26 through 32 above, as though set forth fully herein.

19 **EIGHTH CAUSE FOR DISCIPLINE**

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

21 40. Respondent Godinez has subjected his Smog Check Inspector License to disciplinary
22 action pursuant to Health & Safety Code section 44072.2, subdivision (a), in that on or about
23 December 4 and 11, 2014, he failed to comply with the following sections of that Code:

24 a. **Section 44012, subdivision (a):** Respondent failed to ensure that all emission control
25 devices and systems required by law for the vehicles tested were installed and functioning
26 correctly in accordance with test procedures.

27 b. **Section 44012, subdivision (f):** Respondent failed to perform the emissions control
28 tests on the vehicles in accordance with procedures prescribed by the department.

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

3 Complainant refers to, and by this reference incorporates, the allegations set forth above in
4 paragraphs 26 through 32 above, as though set forth fully herein.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 **(False or Misleading Statements)**

7 43. Respondent Godinez has subjected his Smog Check Inspector License to disciplinary
8 action pursuant to Bus. & Prof. Code section 17500, in that on or about December 4 and 11, 2014,
9 he disseminated untrue or misleading information into the state's database that the LPFET
10 portions of smog inspections had been performed on at least five "1995 model year or older"
11 vehicles when, in fact, they had not, and by issuing electronic smog certificates of compliance to
12 those same vehicles which would not have passed a valid smog inspection. Complainant refers to,
13 and by this reference incorporates, the allegations set forth above in paragraphs 26 through 32
14 above, as though set forth fully herein.

15 **OTHER MATTERS**

16 44. Pursuant to Bus. & Prof. Code section 9884.7, subdivision (c), the Director may
17 suspend, revoke or place on probation the registration for all places of business operated in this
18 state by Lily Ortega, owner of Ortega Smog Check, upon a finding that she has, or is, engaged in
19 a course of repeated and willful violations of the laws and regulations pertaining to an automotive
20 repair dealer.

21 45. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
22 Number TC 274250, issued to Lily Ortega, owner of Ortega Smog Check, is revoked or
23 suspended, any additional license issued under the same chapter in the name of said licensee may
24 be likewise revoked or suspended by the Director.

25 46. Pursuant to Health & Safety Code section 44072.8, if Respondent Christian Godinez's
26 Smog Check Inspector License No. EO 635907 is revoked or suspended, any additional license
27 issued under this chapter in the name of said licensee may be likewise revoked or suspended by
28 the Director.

PRAYER

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

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 274250, issued to Lily Ortega, owner of Ortega Smog Check;
2. Revoking or suspending any other automotive repair dealer registration issued to Lily Ortega;
3. Revoking or suspending Smog Check Station License Number TC 274250, issued to Lily Ortega, owner of Ortega Smog Check;
4. Revoking or suspending Smog Check Inspector License No. EO 635907, issued to Christian Godinez;
5. Revoking or suspending any additional license issued under Chapter 5 of the Health and Safety Code in the name of Christian Godinez;
6. Ordering Lily Ortega, Ortega Smog Check, and Christian Godinez to pay the Director the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
7. Taking such other and further action as deemed necessary and proper.

DATED: 3-11-16

Patrick Dorais by *David Baran*
PATRICK DORAIS
Chief, Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

(tm.2/25/16)